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ABSTRACT

Provided is a summary of 1973 and 1974 legislative and administrative developments affecting handicapped persons. The report is divided into five major sections: an outline of some overriding issues faced by the 93rd Congress; a detailed analysis of the implications for the handicapped of bills enacted by the past session of Congress; a brief discussion of measures considered by Congress but not enacted; a review of major regulations issued during 1973 and 1974 affecting handicapped individuals; and a look at some future issues before the 94th Congress. Provided is information on bills about such areas as education; rehabilitation; housing; social security; supplementary security income, medicaid, and social services; health; appropriations; and transportation. (SB)

93rd CONGRESS: FEDERAL LAWS AND REGULATIONS AFFECTING THE HANDICAPPED

Robert M. Gettings

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PREFACE

In 1973, the National Association of Coordinators of State Programs for the Mentally Retarded published *92nd Congress: Federal Legislation Affecting the Mentally Retarded and Other Handicapped Persons.* This report reviewed and analyzed the major provisions of over twenty bills enacted by Congress in 1971-72, as well as some twenty-five other pieces of legislation which were considered during the period.

Public response to the *92nd Congress* was most favorable. The Association received many complimentary remarks about the concise, readable format of the publication and numerous requests for a sequel covering legislative developments in the 93rd Congress.

In response to these requests, the following summary of federal legislative and administrative developments during 1973 and 1974 has been prepared. Once again, we have tried to present the information in a fashion which will be easily understood by those who do not grasp all of the intricacies and jargon of the federal legislative process. Information about some of the technical features of complex legislation and regulations have been eliminated in the interest of helping the reader to focus on the most important provisions. In this sense, our summary is intended to be an overview of the key features of statutes and regulations affecting the handicapped, rather than a section-by-section analysis of statutory and regulatory law.

One new feature is included in this report. In recognition of the fact that federal regulations often have as much effect as the statute itself in shaping program policies, we have included a new section summarizing some of the more important rules issued during the two-year period by various federal agencies.

The report is divided into five major sections. Section I attempts to briefly outline some of the overriding issues faced by the 93rd Congress in order to give the reader a sense of the political and social context within which legislation for the handicapped was considered. Section II analyzes, in some detail, the implications for the handicapped of bills enacted by the past session of Congress. Measures which were considered by Congress but not enacted are briefly discussed in Section III. Section IV reviews major regulations affecting handicapped individuals issued during the two-year period. Finally, the closing section of the report attempts to take a quick look ahead to some of the major issues before the 94th Congress.

We trust that you will find the information contained in this report of value in our mutual efforts to improve services to all handicapped children and adults.

Robert M. Gettings

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I. INTRODUCTION

The American constitutional system faced its sternest test since the Civil War during the term of the 93rd Congress. In the eventful days between April, 1973 and August, 1974, the Nation watched with rapt attention the unfolding of developments which ultimately led to the resignation of the Vice President and the President of the United States.

While the 93rd Congress will not be remembered for the enactment of landmark legislation, it did amass a respectable record of legislative accomplishments. Far reaching measures relating to the President's war powers, budget reform, campaign spending, elementary and secondary school aid, minimum wages and pension reform were enacted, despite the members' preoccupation with the Watergate scandal and its aftermath during most of the two-year period.

It is difficult to assess the impact of Watergate on the long range balance of power between the legislative and executive branches of the federal government. Will the historic trend toward concentration of power in the Office of the President be reversed because of the lessons of Watergate? Will Congress reclaim some of the constitutional authority which it wielded prior to 1920? Or is the magnificent response of Congress to the constitutional crisis of 1973-74 simply a historical footnote in a long term drift toward executive domination of the instruments of government in the age of thermo-nuclear weapons?

Conclusive answers to these and similar questions will have to await the passage of time. However, it is clear that the Watergate revelations galvanized the 93rd Congress into action and convinced many national leaders and constitutional scholars of the need for Congress to aggressively reassert its claim to some powers which have been slowly eroded away over the years. Among the signs of this new attitude on the part of Congress was the enactment of legislation:

- *Limiting the warmaking powers of the President.* In addition to a bill prohibiting the President from committing U.S. troops overseas for more than 60 days without the approval of Congress, the House and Senate ignored White House pressure and passed measures cutting off funds for U.S. bombing of Cambodia and suspending U.S. military and economic aid to Turkey in response to that country's invasion of Cyprus.

- *Establishing a system for financing Presidential campaigns.* The new system, which authorizes up to $20 million in public support for major candidates, is designed to limit the pervasive influence of big corporate and individual campaign contributors, so graphically illustrated in the Watergate hearings.

- *Creating a new Congressional budgeting system and restricting the President's authority to impound federal funds appropriated by Congress.* The new legislation, entitled the Congressional Budget and Impoundment Control Act of 1974 (P.L. 93-344), is intended to: (a) eliminate the old fragmented approach to considering appropriation and revenue matter by establishing a joint congressional budget committee and a well-staffed Congressional Budget Office to produce more responsible alternatives to the President's spending proposals; (b) establish a firm budget calendar in order to eliminate the long delays and piecemeal handling of appropriation measures; (c) control so-called "backdoor spending"—i.e., federal funds which are not considered as part of the annual appropriations process; and (d) compel the President to expend appropriated funds impounded without the authorization of Congress.

None of these actions on the part of Congress had any immediate impact on legislation affecting handicapped children and adults. And yet, it is important to recognize that these general developments provided the framework within which all decisions were made regarding the

legislation discussed in this report.

For example, the new bullish attitude on the part of Congress was reflected in the following ways during the 93rd Congress:

• *Increased specificity in provisions of laws affecting the handicapped.* Distrustful of the Nixon Administration's commitment to social programs generally and programs for the handicapped in particular, Congressional committees tended to include detailed statutory specification regarding the operation of federal programs. Examples of such provisions include: (a) the statutory transfer of the Rehabilitation Services Administration from the Social and Rehabilitation Service to the Office of Human Development (see p. 6); (b) enactment of the Social Services Amendments of 1974 (see p. 11); and (c) the statutory establishment of the position of Deputy Commissioner of Education to head the Bureau for Education of the Handicapped (p. 4). In prior years, such provisions would have been considered unnecessary incursions on the administrative discretion of the Executive Branch.

• *Expansion of the activities of the General Accounting Office into the area of programs for the handicapped.* During 1973 and 1974, GAO, the investigative arm of Congress, undertook several special studies of programs serving handicapped children and adults, including the vocational rehabilitation, education of the handicapped and developmental disabilities programs. In previous years, GAO had shown little interest in this area.

• *Establishment of statutory deadlines for submittal of regulations and requirements for prior Congressional review of administrative regulations and policies.* Fed up with the time-consuming and often unresponsive rule making process, Congress started to set specific deadlines for the publication of final regulations (e.g., the Rehabilitation Amendments of 1973, see p. 4). In addition, the legislative committees began to demand a chance to review certain key regulations and policies for conformance with Congressional intent before they were issued.

To some extent this new emphasis on Congressional oversight may be a reflection of the current partisan split between a Democratic Congress and a Republican President, exacerbated by the general paranoia of the Watergate era. However, a growing number of Senators, Congressmen and Capitol Hill aides seem to recognize that it is not enough simply to pass a law. Instead, to effectively carry out its mission, they emphasize, Congress must be more intimately involved in the process of implementing laws and evaluating their effects.

II. BILLS ENACTED BY THE 93rd CONGRESS

A. EDUCATION

Education Amendments of 1974 (P.L. 93-380)

The Education Amendments of 1974 extend and amend the Elementary and Secondary Education Act of 1965, the Education of the Handicapped Act and a variety of other federal education statutes. A total of $25.2 billion in federal aid to education is authorized under the 1974 Amendments, including expanded assistance to schools serving handicapped children.

Major revisions are made in the provisions of the Elementary and Secondary Education Act. Perhaps, the most important change is the inclusion of a revised formula for distributing Title I, ESEA funds. The per capita support level is reduced from 50 to 40 percent of the average per pupil costs of educating a child within the state (or in the nation, if higher). In addition, no state or local school agency may receive less than 80 percent or more than 120 percent of the national average per pupil expenditure.

The revised formula is intended to equalize per capita federal aid among states and local school districts, incorporate a fairer poverty standard and account for population shifts since the 1960 census. The overall effect is to channel more funds to southern and rural areas and less to large cities and relatively wealthy states by placing reduced emphasis on the number of children in AFDC families within the state. P.L. 93-380 also contains the following significant legislative advances for handicapped children:

• *Expanded Assistance to the States.* The legislation contains a slightly modified version of a Senate amendment originally introduced by Senator Charles (Mac) Mathias (R-Md.). Under the Mathias Amendment, FY 1975 funds to assist in educating handicapped children in the public schools are sharply increased in order to help states faced with meeting court or legislatively imposed "right to education" mandates. A total of $631 million is authorized in FY 1975. State allotments are based on a system of entitlements, determined by multiplying the total number of children, ages 3 through 21, in the state times $8.75.

In addition, P.L. 93-380 extends the existing authority for grants to the states, under Part B of the Education of the Handicapped Act, for two additional years with $100 million authorized in FY 1976 and $110 million in FY 1977.

• *Aid to State Supported Schools.* The principle of "off-the-top" funding for state agency programs under Title I is retained in the 1974 Amendments. In other words, as in the past, all state operated and supported programs for handicapped, migrant, neglected and delinquent children must be fully funded before Title I aid is distributed to local school districts.

A provision is also added to the Act which permits a state agency, for purposes of determining its Title I, ESEA entitlements, to continue to count a handicapped child when responsibility for the child's education is transferred from a state operated or supported facility to a local school district. However, the funds received must be forwarded to the local educational agency which is actually providing services to the particular handicapped child.

If, for example, responsibility for educating a group of institutionalized children is transferred from a state run facility to the local school district, the state's Title I entitlements will not be reduced as they have been in the past. This amendment was added by the House, and later accepted by the Senate, in an effort to encourage deinstitutionalization and normalization of educational services for handicapped youngsters.

In order to avoid cutbacks in aid to state operated and supported schools for handicapped children, which would have been mandated under the new Title I formula, P.L. 93-380 includes language which guarantees that no state agency will receive less in FY

1975 and subsequent fiscal years than it got in FY 1974. Without this provision Title I aid to the handicapped would have been reduced by $24 million in FY 1975.

• *Education for All Plans.* The legislation requires the states to establish a goal of providing full educational opportunities for all handicapped children and submit, by August 21, 1975, a detailed plan and timetable for achieving this goal. In addition, the bill provides procedural safeguards for use in identifying, evaluating and placing handicapped children, mandates that such youngsters be integrated into regular classes whenever possible, and assures that testing and evaluation materials are selected and administered on a non-discriminatory basis. These latter provisions are based on floor amendments introduced by Senator Robert T. Stafford (R-Vt.).

• *Deputy Commissioner of Education.* P.L. 93-380 establishes the position of Deputy Commissioner of Education to direct the Bureau for Education of the Handicapped. The bill also assigned several additional "super grade" positions to the Bureau.

• *Impact Aid.* In computing the amount of federal impact aid a local school district is entitled to receive, a handicapped child will be counted as one and one-half children. To be counted, however, a child must be included in a program which meets his or her special educational needs.

• *Adult and Career Education.* Up to 20 percent of adult education formula funds may be used for education of institutionalized persons. In addition, exemplary career education grants are required to include models in which handicapped children participate.

• *Extension of Existing Authorities.* A number of existing grant programs authorized under the Education of the Handicapped Act are extended for three additional years and a new section is added authorizing grants for regional vocational, technical, post-secondary or adult education programs benefitting the deaf and other handicapped individuals.

General Education Amendments (P.L. 93-269)

Congress enacted a measure to permit state and local schools to carry over to the next fiscal year unused funds from 1974 as well as impounded funds from 1973. Similar legislation, commonly referred to as the "Tydings Amendments," had been on the statute books for several years but was scheduled to expire on June 30, 1974. A number of educational programs for handicapped persons, which were due to lapse FY 1974 funds on June 30, benefitted from the enactment of P.L. 93-269.

B. REHABILITATION

Rehabilitation Amendments of 1973 (P.L. 93-112)

The Rehabilitation Amendments of 1973 extend one of the nation's oldest and most effective grant-in-aid programs. Originally enacted in 1920 as the Smith-Fess Act, the scope of the initial legislative authority was subsequently enlarged in 1943, 1954, 1965, 1967 and 1968. The 1973 Amendments completely recodify the old Vocational Rehabilitation Act and place strong emphasis on expanding services to more severely handicapped clients. The following is a brief summary of the major features of P.L. 93-112:

• *Extension of Basic Grant Program.* P.L. 93-112 extends the federal-state grant program for vocational rehabilitation services for an additional two years and sets authorization ceilings of $650 million in FY 1974 and $680 million in FY 1975. A study of the current formula for allotting funds among the states is also authorized.

• *Service Priorities for the Severely Handicapped.* For the first time state rehabilitation agencies are directed to give priority to serving "those individuals with the most severe handicaps" in their basic state vocational rehabilitation program. In addition, state agencies are required to describe "the method to be used to expand and improve services to handicapped individuals with the most severe handicaps." Similar provisions granting priority to the most severely handicapped clients, are contained in Section 121 (Innovation and Expansion Grants), Section 202 (Research), Section 302 (Vocational Training Service Grants) and Section 304 (Special Projects and Demonstrations).

• *Individualized Written Rehabilitation Program.* The state agency is required to develop an individualized written rehabilitation program on each client it serves. This program, which is to be jointly developed by the rehabilitation counselor and the handicapped individual (or, in appropriate

cases, his parents or guardian), will spell out the terms, conditions, rights and remedies under which services are provided to the individual and state the long range and intermediate goals to be attained. Each individual's program must be reviewed at least annually and safeguards are included to assure that every individual capable of achieving a vocational goal has an opportunity to do so.

• *Consolidated Rehabilitation - Developmental Disabilities Plan.* The new Amendments contain a provision authorizing states to submit a consolidated vocational rehabilitation-developmental disabilities plan. However, the state DDSA agency must agree to the consolidated state plan before it can go into effect. In addition, the Secretary of HEW may reject any such consolidated state plan.

• *Special Projects and Demonstrations.* The special project grants section of the old Act (Section 4 (a) (1)) was rewritten and language authorizing grants for "problems related to the rehabilitation of the mentally retarded" was deleted. Instead, the new Amendments direct HEW to give special attention to providing vocational rehabilitation services for clients with the most severe handicaps, including individuals with spinal cord injuries, older blind, under achieving deaf and migratory farm workers.

• *Sheltered Workshop Study.* P.L. 93-112 directs the Secretary of HEW to conduct a comprehensive, 24 month study of the role of sheltered workshops in rehabilitation and employment of handicapped individuals.

• *Coordination of Programs for the Handicapped.* The 1973 Amendments direct the Secretary of HEW to: (a) prepare and submit a long range plan for serving handicapped individuals; (b) conduct a continuing analysis of the operation and effectiveness of federal programs serving the handicapped; (c) identify unnecessary duplication and overlap in such programs; (d) encourage cooperative, interagency planning); (e) promote the prompt utilization of research findings; (f) serve as a central clearinghouse for information and resources; and (g) evaluate existing information and data systems, identify gaps and ways of filling them and spearhead the development of a coordinated, Department-wide information and date retrieval system.

• *Organization and Administration.* For the first time, P.L. 93-112 establishes, by statute, a Rehabilitation Services Administration within HEW and delegates to the Commissioner of RSA responsibility for administering all aspects of the rehabilitation program authorized under the Act (previously delegated to the Secretary of HEW). The Commissioner is to be appointed by the President. The Act forbids the Secretary from redelegating any of the Commissioner's authority without the explicit approval of Congress. The Secretary is also directed to insure that all funds appropriated under the Act are used to support rehabilitation programs.

• *Innovation and Expansion Grants.* Separate existing authorities for innovation and expansion grants are consolidated into a single formula grant program. Authorization levels for the program are: $37 million in FY 1974 and $39 million in FY 1975.

• *Non-Discrimination and Employment Under Federal Contracts.* P.L. 93-112 contains a provision forbidding discrimination against otherwise qualified handicapped persons in any federally assisted program or activity.

The bill also requires all federal contractors and subcontractors to take affirmative action to employ qualified handicapped individuals. Complaints may be filed with the Department of Labor by any aggrieved handicapped individual.

• *Federal Interagency Committee on Handicapped Employees.* A Federal Interagency Committee on Handicapped Employees is establish to investigate the status of handicapped individuals working for the federal government. After consulting with the Committee, the Civil Service Commission is directed to report annually to Congress on the effectiveness of the federal government's efforts to hire handicapped workers. Every federal agency is required to submit an affirmative action plan for hiring, placing and advancing handicapped individuals within 180 days after enactment of the legislation. In addition, the Civil Service Commission is responsible for recommending to appropriate state agencies policies and procedures for improving employment opportunities for handicapped workers.

• *Client Assistance.* Funds are authorized for a series of 7 to 20 pilot client assistance projects. The purpose of these projects is to advise clients on available benefits and help them in their dealings with rehabilitation agencies. For this purpose, $1.5 million (but not less than $500,000) is authorized in FY 1974 and $2.5 million (but not less than $1 million) in FY 1975.

• *Architectural and Transportation Barriers Compliance Board.* An interagency board is created to assure compliance with the Architectural Barriers Act of 1968 and study additional ways of eliminating architectural and transportation barriers in public facilities. The Board is responsible for undertaking a study of the transportation and housing needs of handicapped individuals.

• *Mortgage Insurance for Rehabilitation Facilities.* A provision is included in the new Act which authorizes up to 100 percent mortage insurance to cover the costs of constructing public or nonprofit rehabilitation facilities. Initial capital is authorized for the insurance fund and a $200 million restriction is placed on the total amount of outstanding mortgages.

• *National Center for Deaf-Blind Youths and Adults.* Funds are authorized to establish and operate a National Center for Deaf-Blind Youths and Adults to demonstrate new techniques and conduct research related to rehabilitating deaf-blind individuals.

Rehabilitation Act Amendments of 1974 (P.L. 93-516)

The Rehabilitation Act Amendments of 1974 extend existing authorities under the Act for one additional year at a total authorization level of $851.5 million. In addition, P.L. 93-516 transfers the Rehabilitation Services Administration from the Social and Rehabilitation Service to the Office of the Secretary, authorizes the President to call a White House Conference on the Handicapped, amends the Randolf-Sheppard Act and clarifies several provisions in the Rehabilitation Act of 1973.

Among the highlights of the 1974 Amendments are the following:

• *Removal of the Rehabilitation Services Administration from the Social and Rehabilitation Service and placing it in the Office of the Secretary of HEW.* The Secretary is permitted to locate RSA only in his immediate office, the office of the Under Secretary, or the office of an appropriate Assistant Secretary. The legislation also makes the RSA Commissioner subject to Senate confirmation and clarifies the limitations on delegation of the Commissioner's responsibilities.

• *Authorization for the President to call a White House Conference on the Handicapped within three years.* The purpose of the conference would be to explore the problems faced by handicapped Americans and develop administrative and legislative recommendations for addressing these problems. Pre-White House conferences are envisioned in each state and a National Planning and Advisory Council is authorized to plan and direct the Conference. The following sixteen special target areas for Conference attention are specified in the legislation: early childhood services, educational services, independent living services, communication services, mobility services, utilization of engineering and technology, equal employment opportunities, sufficient income, research, diagnostic and evaluation services, review of governmental programs, special problems of handicapped veterans, public awareness and attitudes, the special problems of persons who are institutionalized or homebound, the special problems of handicapped persons with limited English-speaking ability and the allocation of federal vocational rehabilitation funds.

• *Amendments to the Randolph-Sheppard Act to increase vending stand opportunities for blind individuals in federal buildings.* The purpose of the amendments is to update the provisions of the statute, initially enacted by Congress in 1938, and to eliminate barriers to further growth and development of the program. The statutory preference granted to blind stand operations is clarified and the manner in which vending machine revenues are to be divided is outlined in the legislation.

• *Amendments to several provisions of the Rehabilitation Act of 1973 to clarify the intent of Congress,* including:

—the addition of a new, broader definition of the term "handicapped individual", applicable to Titles IV and V of the Act and, in

particular, the non-discrimination provisions contained in Sections 501, 503 and 504. The focus of the new definition is on substantial limitations to an individual's functioning in one or more of his major life activities, rather than on handicaps to employment, vocational objectives or potential benefits from vocational rehabilitation services. Also covered under the new definition are persons who have been mislabelled as handicapped;

—refinements in the requirement for developing an individualized written rehabilitation plan on each client. Emphasis is placed on reporting and analyzing the reasons for determinations of ineligibility for services and re-evaluating individuals refused services to ascertain whether they have any potential for achieving vocational goals. Clients must be given an opportunity to participate in any determination of service ineligibility and be advised of their rights and the remedies available to them;

— a waiver of the requirement in FY 1976 and FY 1977 that earmarked funds for client assistance projects only becomes effective after appropriations for special projects and demonstrations exceed the amount previously available for this purpose;

—a seven month delay in the date for submission of a special study on comprehensive service needs of the most severely handicapped individuals;

—a revised composition and an amended list of functions of the Architectural and Transportation Barriers Compliance Board;

—a requirement that state vocational rehabilitation agencies and facilities supported under the Act adopt affirmative action plans for the employment and advancement of qualified handicapped individuals.

Committee for Purchase of Products and Services of the Blind and Other Severly Handicapped (P.L. 93-76)

P.L. 93-76 increases the authorization for operation of the Committee for Purchase of Products and Services of the Blind and Other Severely Handicapped to $240,000 in fiscal year 1974. The Committee is responsible for designating the products and services required by Federal agencies which may be produced or provided by sheltered workshops under the Wagner-O'Day program.

Wagner-O'Day Act Amendments (P.L. 93-358)

This legislation amends the Wagner-O'Day Act of 1938, a statute which offers sheltered workshops serving the blind and severely handicapped special preference in bidding on government contracts, to: (a) change the name of the "Committee for Purchase of Products and Services of the Blind and Other Severely Handicapped" to the "Committee for Purchase from the Blind and Other Severely Handicapped"; (b) provides a continuing authorization for the operation of the Committee; (c) increases the Committee's membership from 14 to 15; and (d) clarifies the definition of "direct labor" so that it expressly covers the provision of services as well as the manufacture of commodities.

C. HOUSING

Housing and Community Development Act of 1974 (P.L. 93-383)

A four year legislative deadlock ended in Ausust, 1974 when President Ford signed into law the Housing and Community Development Act of 1974. Referred to by one Congressional leader as "probably the most important piece of legislation on housing since the passage of the National Housing Act of 1934", the 1974 Amendments revise or rewrite every major piece of housing legislation enacted by Congress over the past forty years.

Among the major features of P.L. 93-383 are: (a) the adoption of a new system of block grants for community development to replace ten existing urban renewal programs; and (b) the initiation of an expanded leasing program to provide direct housing subsidies to low income families. In addition to these and other significant provisions, the omnibus bill contains several important amendments which should expand federal housing assistance on behalf of handicapped persons.

The overall thrust of the new legislation is toward decentralization of decision-making authority in the federal housing program. Increased responsibility is delegated to state and local public housing agencies and the 38 HUD area offices.

The following is a brief summary of the highlights of P.L. 93-383 as it affects handicapped citizens:

- *Housing Leasing Program.* The 1974 amendments sharply expand the so-called Section 8 program (formerly referred to as the Section 23 program) to permit HUD to enter into Housing Assistant Payment Contracts with private owner-developers or public

housing agencies (state or local). In addition, public housing agencies may enter into HUD approved Housing Assistance Payment Contracts with private owner-developers. Under such a contract, HUD agrees to pay the owner, either directly or through the public housing agency, housing assistance payments on behalf of eligible low income families in exchange for decent, safe and sanitary housing.

The assistance payment is based on HUD's determination of the fair market rent for similar housing in the area. This amount is adjusted automatically each year, based on market conditions, and can be changed more frequently, if warranted. The housing assistance payment on behalf of an eligible family, in accordance with criteria established by HUD, will equal the difference between: (a) not less than 15 percent or more than 25 percent of the family's gross income; and (b) the gross rent, taking into consideration the income of the family, the number of minor children in the household, and the extent of medical and other unusual expenses incurred by the family.

Section 8 funds can be used for either new construction or substantial rehabilitation projects. The types of new construction permitted include new single family homes, mobile homes, multi-family structures and *congregate housing for elderly or handicapped families and individuals.* A "lower income family" is defined as one whose income does not exceed 80 percent of the median income for the area, as determined by HUD. A "very low income family" is one whose income does not exceed 50 percent of the median income for the area, as determined by HUD. In both cases, adjustments are made for smaller or larger families.

In defining the term "low income families", for purposes of the Housing Leasing program, the 1974 Amendments say that the term may include "families consisting of a single person who is at least sixty-two years of age or under a disability as defined in Section 223 of the Social Security Act or in Section 102 (b) (5) of the Developmental Disabilities Services and Facilities Construction Amendments of 1970, or is handicapped...". In addition, the term "elderly families" may include "two or more elderly, disabled or handicapped individuals living together, or one or more such individuals living with another person who is determined under regulation...to be a person essential to their care and well being."

"A person is considered handicapped if...pursuant to regulation...such person is determined...to have an impairment which (i) is expected to be of long-continued and indefinite duration, (ii) substantially impedes his ability to live independently, and (iii) is of such a nature that such ability could be improved by more suitable housing conditions."

• *Housing for the Elderly and Handicapped.* P.L. 93-383 authorizes the Secretary of Housing and Urban Development to borrow up to $800 million from the Treasury Department to make direct government loans for housing the elderly and the handicapped. $100 million, which has accumulated in an existing revolving fund, also will be available for this purpose. Non-profit groups, limited-dividend developers, consumer cooperatives and public agencies are eligible for such loans.

Interest on HUD borrowing and on the housing loans will be established at the current average market yield on outstanding U.S. obligations of comparable maturity dates (plus an amount to cover administrative costs on the loans). Assistance payments under Section 8 of the U.S. Housing Act of 1937, as amended, will be available both to new and existing projects under this authority and HUD must take into account the availability of such payments in assessing the feasibility and marketability of a project.

For purposes of loans under Section 202 of the Act, the definition of the term "handicapped" is broadened to include both the mentally and the physically handicapped. In addition, specific language is included to clarify the fact that developmentally disabled individuals, as defined in P.L. 91-517, are considered handicapped persons for purposes of Section 202 loans. In the past, some projects involving mentally retarded individuals were refused HUD loans because the retarded did not meet the definition of "physically handicapped" contained in the Act.

The goal of the amendments to Section 202 is to breath new life into the program which has been in trouble for the past few years because of its impact on the federal budget. It is hoped that the revised financing structure will make available a steady flow of capital for housing the elderly and the handicapped since the loans will not be reflected in the federal budget.

• *Community Development Block Grants.* The primary goal of the Community

Development Program, authorized under Title I of P.L. 93-383, is the development of viable urban communities, including decent housing, a suitable living environment and expanded economic opportunities, principally for persons with low and moderate income. In pursuit of this goal, the new program is designed to help eliminate slums, improve housing code enforcement, expand the Nation's housing stock, upgrade the quality and quantity of community services to low and moderate income families, promote rational land utilization, increase the diversity and vitality of neighborhoods, and preserve historical properties.

Title I grant funds are allocated by the Secretary to metropolitan and non-metropolitan areas on the basis of a formula which takes into account population, the extent of poverty and the extent of housing overcrowding. Eighty percent of appropriated funds, excluding the Secretary's discretionary funds, are allocated to metropolitan areas (communities with a population of 50,000 or greater in the latest national census). The remaining 20 percent is allocated to non-metropolitan areas.

In order to qualify for Title I assistance, a community is required to submit a housing assistance plan which, among other things, must contain a survey of housing needs (including the housing needs of the elderly and the handicapped).

One of the purposes for which community development grant funds may be used is for special projects to remove "architectural barriers which restrict the mobility and accessibility of elderly and handicapped persons...". On the other hand, Title I funds may *not* be used for acquiring, constructing or rehabilitating a public facility unless it is a type of facility specified in the Act. Hospitals, nursing homes and other medical facilities are *not* eligible for assistance under Title I. Other categories of ineligible costs include operating and maintenance expenses, general government expenses, political activities, new residential housing construction and direct income payment or housing allowances.

The important point to remember is that all HUD assisted housing now must conform to the community's (or state's) housing assistance plan. This plan will be the basic document used by HUD field offices in reviewing Section 8 applications; in addition, local governments, in effect, have been given authority to veto projects which they find are not in conformance with the local housing assistance plan. Only the HUD Secretary can override such a veto and, given political realities, this is not expected to happen very often.

• *Provision of Services to the Elderly and the Handicapped.* The Secretary of HUD is required to consult with the Secretary of HEW to insure that special projects for the elderly or handicapped meet acceptable standards of design and "provide quality services and management consistant with the needs of the occupants." Such facilities must be designed and equipped with necessary "related facilities" to accommodate the "special environmental needs of the intended occupants..." and be found in conformance with state plans developed under the Mental Retardation Facilities and Community Mental Health Center Construction Act of 1963, as amended, or the Older Americans Act of 1965, as amended.

In a similar vein, under the authority for Section 202 loans, the Secretary of HUD is directed to assure that a range of appropriate supportive services are provided for the elderly or handicapped, including health, continuing education, welfare, informational, homemaker, counseling and referral services and transportation where necessary to facilitate access to social services.

• *Special Demonstration Projects.* Section 815 of the new Act authorizes $10 million for special demonstration projects to determine how best to design and structure housing for the elderly, handicapped, displaced and other groups with special needs. The Secretary of HUD may award grants "to individuals and entities with special competence and knowledge to contribute to the planning, development, design and management of such housing." Priority must be given to the most neglected housing needs.

D. SOCIAL SECURITY, SUPPLEMENTARY SECURITY INCOME, MEDICAID AND SOCIAL SERVICES

Social Security Amendments (P.L. 93-66 and P.L. 93-233)

Two sets of significant amendments to the Social Security Act were enacted during the 1st Session of the 93rd Congress. P.L. 93-66, signed into law on July 9, 1973, increased social security benefits, raised the federal SSI payment level, expanded

mandatory state supplementation under SSI, extended benefits to "essential persons," protected certain Medicaid recipients against loss of benefits due to SSI eligibility, repealed restrictions on reimbursements for nursing home care and placed a four month moritorium on implementation of new social services regulations.

Then, in the waning days of the session, Congress took further steps to correct deficiencies and inequities created by the enactment of the Social Security Amendments of 1972. P.L. 93-233 authorized a further extension of the moritorium on new social services regulations, plus additional increases in social security and SSI benefits. Further steps also were taken to protect current aged, blind and disabled recipients against the loss of Medicaid and food stamp benefits once the SSI program went into effect.

Because of the controversy surrounding the use of federal social services funds and the lack of consensus on the most appropriate legislative solution, during 1973 Congress twice delayed implementation of new HEW regulations governing social service expenditures. Effective July 1, 1973, P.L. 93-66 placed a four month moritorium on regulations issued in final form by the Department in May, 1973. Despite the issuance of modifications to the May regulations in September and October, Congress voted in late December to extend the moritorium through December 31, 1974 (P.L. 93-233). In taking these actions, Congress made clear its intent to consider substantive legislative changes in the program during the 1974 session in order to clarify the policy making roles of federal and state governments and the statutory objectives of the program.

During 1973 Congress also moved to increase social security benefits, eliminate inequities and otherwise modify the Supplementary Security Income (SSI) program. SSI, enacted by Congress as part of the Social Security Amendments of 1972 (P.L. 92-603), replaced separate state-run programs for the aged, blind and disabled with a single, federally financed and administered program of cash assistance for such persons, effective January 1, 1974.

The main thrust of both sets of 1973 amendments was to assure elderly and disabled individuals an adequate income and protect certain recipients against loss of associated benefits.

Among the relevant provisions of P.L. 93-66 and P.L. 93-233 are:

• *Increased Social Security Benefits.* A 5.6 percent cost-of-living increase in benefits was approved for all social security recipients, effective in June, 1974 (P.L. 98-66). Later in the year, an additional two-stage, 11 percent increase in benefits was voted by Congress (P.L. 93-233).

Over one million disabled Americans currently receive social security benefits. Of this number, some 287,000 are adults disabled in childhood.

• *Increased SSI Benefits.* The Federal payment level for the aged, blind and disabled under SSI was raised to $140 a month for individuals and $210 a month for couples, effective July, 1974 (P.L. 93-66). Later in the session, Congress advanced the effective date of this increase to January 1, 1974 and voted a second increase ($146 per month for single beneficiaries and $219 for couples), effective July 1, 1974 (P.L. 93-233).

• *Essential Persons Coverage.* SSI benefits were extended to so-called "essential persons"—i.e., persons needed to care for SSI recipients—under certain conditions (P.L. 93-66).

• *Mandatory Supplementation.* States were required to supplement Federal SSI payments to current aged, blind and disabled recipients who, otherwise, would have had their payments reduced when the new "federalized" program went into effect. States failing to provide such supplementation would be ineligible to receive Federal Medicaid matching after January 1, 1974 (P.L. 93-66). P.L. 93-233 further required that Medicaid coverage be mandatory for those persons who received a mandatory state supplement to SSI.

• *Medicaid Eligibility.* Among the groups protected against loss of Medicaid eligibility after SSI went into effect are: (1) essential persons; (2) the disabled individual who does not meet the Federal definition of disability and yet is currently eligible for Medicaid as a medically needy person; and (3) an individual who is an inpatient in a medical institution and whose special needs made him eligible for assistance. P.L. 93-233 goes one step further and makes Federal matching available for Medicaid benefits on behalf of any new SSI recipient; however, coverage of such newly eligible persons is optional on the part of the state.

• *Food Stamp Eligiblity.* P.L. 93-233 suspended for six months a requirement

[1] For a brief review of this legislation, see 92nd CONGRESS: FEDERAL LEGISLATION AFFECTING THE MENTALLY RETARDED AND OTHER HANDICAPPED PERSONS, Nat. Assoc. of Coordinators of State Programs for the Mentally Retarded, Inc., 1973, pp 9-10.

making an aged, blind and disabled person ineligible for food stamps in any month in which his SSI payment plus the state supplement were at least equal to the welfare payment and the bonus value of food stamps he would have been eligible to receive under the state plan in effect on December 1, 1973.

• *Other Provisions.* P.L. 93-66 repealed a provision of law which restricted to 5 percent the annual increase in allowable per diem costs for skilled nursing homes and intermediate care facilities. P.L. 93-233 established an upper limit on the monthly income (initially $240 for a single individual) which an institionalized person can have and still be "deemed" in special need and, therefore, eligible for Title XIX coverage in a state without a medical indigency plan. Federal SSI payments will be reduced dollar-for-dollar in any state which uses supplemental payments to provide for institutionalized persons in substandard facilities if such care could be provided under the state's Medicaid program (P.L. 93-233).

Social Services Amendments of 1974 (P.L. 93-647)

Three years of conflict between Congress and the Executive Branch ended on January 4 when President Ford signed into the law the Social Services Amendments of 1974. The new law establishes statutory goals, spells out new eligibility criteria and specifies operating procedures for a completely revamped federal-state social services program.

The following is a brief rundown of the major features of the 1974 Amendments, with special emphasis on those provisions which are likely to affect service programs for handicapped citizens:

• *Overall Organization.* A new Title XX is added to the Social Security Act authorizing grants to the states for social services. This new title is designed to consolidate under a single authority present authorizations for social services grants under Titles IVA and VI. Existing provisions in Titles IVA and VI are repealed.

• *Goals of the Program.* The new legislation provides that social services funds must be directed toward the achievement of the following goals:

—achieving or maintaining economic *self-support* to prevent, reduce or eliminate dependency;

—achieving or maintaining *self-sufficiency* including reduction or prevention of dependency;

—preventing or remedying *neglect, abuse or exploitation of children and adults* unable to protect their own interests, or preserving, rehabilitating or reuniting families;

—preventing or *reducing inappropriate institutional care* by providing for community-based care, home-based care or other forms of less intensive care;

—securing *referral or admission for institutional care* when other forms of care are not appropriate, or providing *services to individuals in institutions.*

• *Eligibility and Priority for Services.* Fifty percent of a state's allotment of federal social services funds must be used for services to recipients of AFDC, SSI and Medicaid as well as so-called "essential persons". The current $2.5 billion ceiling on appropriations for the program remains unchanged.

States are required to establish fee schedules for services to eligible individuals and families. Fee schedules for services to individuals and families with monthly incomes not exceeding 80 percent of the state's median income (or 100 percent of the national median income, if lower), adjusted to the size of the family, must conform to regulations prescribed by the Secretary of HEW. The states are required to charge fees, reasonably related to income, for services to individuals and families with monthly gross incomes of between 80 percent of the state's median income (or 100 percent of the national median, if lower) and 115 percent of the state's median income. Federal reimbursement is not available for services to individuals or families with incomes exceeding 115 percent of the state's median income. Information and referral services and services intended to prevent or remedy neglect, abuse and exploitation of children or adults, however, may be provided without charge to any individual or family, regardless of income.

The Secretary of HEW is responsible for promulgating median family income data.

• *Definition of Social Services.* Under P.L. 93-647, states have complete discretion to define social services, provided such services are directed at the above statutory goals. However, use of federal funds to support the following activities is prohibited:

—supporting an educational service if a state makes the service "generally available to its residents without cost and without regard to their income."

—supporting medical or remedial services to persons which can be paid for under Medicaid or Medicare, unless such services are an integral and subordinate part of a social service;

—purchasing, constructing or making any major modifications in land, buildings or other facilities;

—using social services funds for cash payments to an individual or family;

—financing services to individuals living in any hospital, skilled nursing facility, or intermediate care facility (including any hospital or facility for mental disease or for the mentally retarded), any prison or foster family home, unless the service: (a) is provided by an agency other than the facility the individual is living in; and (b) is provided under the state's plan to persons not living in the facility.

—supporting in-home child care services which fail to meet state standards established in accordance with the recommended standards of national organizations;

—paying for room and board only when such costs are an integral and subordinate part of the delivery of social services and then for no more than six consecutive months;

—paying for out-of-home child care services which fail to meet the 1968 "Federal Interagency Day Care Standards". The statute, however, includes certain modifications in the 1968 standards relative to staffing standards and the applicability of educational standards. In addition, the Secretary of HEW is required to submit to Congress recommendations for modifying the 1968 standards.

Among the services specifically mentioned in the new Act as eligible for federal reimbursement are: family planning services, child care services, protective services for children and adults in foster care, services related to the management and maintenance of the home, day care services for adults, transportation services, training and related services, employment services, information, referral, and counselling services, the preparation and delivery of meals, health support services, and appropriate combinations of services intended to meet the special needs of children, the aged, *the mentally retarded, the blind, the emotionally disturbed, the physically handicapped,* alcoholics and drug addicts. The state may specify other services in its plan and the Secretary of HEW "may not deny payment...to any State with respect to any expenditure on the grounds that it is not an expenditure for the provision of a service directed at a goal described..." in the legislation.

• *Program Planning, Reporting, Evaluation and Auditing.* The states are required to prepare comprehensive social services plans in advance of the program year and provide ample opportunity for public comment prior to final approval. This plan must include an indication of: (a) the objectives to be achieved; (b) the categories of individuals to be served; (c) the services to be provided and their relationship to the statutory goals (a state is required to provide at least one service directed at each of the goals and at least three types of services, selected by the state, to SSI recipients); (d) the geographical areas to be served; (e) the planning, reporting and organizational structure to be used; (f) indication of how services will be coordinated with other welfare-related service programs in the state; (g) estimated expenditures under the program by category, service and geographic area; and (h) the steps taken to assure that all residents of the state were taken into account in developing the plan. The states also must conform to HEW reporting requirements.

• *State Plan Requirements.* The states are required to submit a state plan to HEW prior to the beginning of the program year. This plan must include the following items: fair hearing assurances, restrictions on the disclosure of client information, designation of an administering state agency, a prohibition against durational residency or citizenship requirements, merit system assurances, designation of a state authority to set child day care standards, assurances that the program will be in effect in all subdivisions of the state and that the state will participate directly in some portion of new federal matching. In addition, if the state provides services to individuals living in institutions or foster homes, a state authority or authorities must be designated to set and monitor compliance with standards related to admission policies, safety, sanitation and protection of civil rights.

If a state fails to comply with any of the above requirements, the Secretary may either terminate funding or withhold 3 percent of the

state's federal entitlement under the Act for each activity involving non-compliance.

• *Maintenance of Effort.* The state must give assurances that the portion of non-federal aggregate expenditures which are drawn from public funds (state and local) is not less in any fiscal year than the amount expended for social services in fiscal year 1973 or 1974, whichever is less. This maintenance of effort requirement does not apply to non-public donated funds.

• *Matching Requirements.* The matching requirements remain unchanged—i.e., 75 percent federal matching will be provided for social services, except for family planning services which will continue to receive 90 percent matching. Matching may include:

—cash matching by the state or its political subdivisions;

—in-kind state matching, but not in-kind matching transferred to the state by a private agency;

—donated private funds, provided that the funds are actually transferrable to the state and are under its administrative control. Such donated funds may be counted for federal matching as long as there is no restriction on their use. One exception is that fund usage may be specified as long as the donating organization does not sponsor or operate a service program. Funds donated by proprietary organizations may not revert to the donor's facility.

• *Evaluation and Reporting.* HEW is required to provide technical and program assistance to the states and conduct an annual evaluation of the program. Prior to July 1, 1977, the Secretary of HEW is obligated to submit a report to Congress on the effectiveness of the Title XX program along with any recommendations for improvement.

• *Effective Date.* The new social services program is scheduled to go into effect on October 1, 1975—a date which coincides with the beginning of the new federal fiscal year. No final federal regulations will be effective until the subsequent year if published within 60 days of the beginning of a service program year.

The new law also extends the moritorium on the issuance of new or revised HEW regulations governing programs under titles IVA and VI through October 1, 1975.

• *Reallotment.* When one or more states are unable to use their full allotment under Title XX in any fiscal year, P.L. 93-647 provides that such excess funds may be reallotted among Puerto Rico, the Virgin Islands and Guam, which are otherwise ineligible to participate in the program. Puerto Rico is entitled to receive up to $15 million in reallotted funds while the ceiling on aid to the Virgin Islands and Guam is $500,000.

Social Security Amendments (P.L. 93-256, P.L. 93-335, P.L. 93-368, and P.L. 93-484)

During 1974, Congress continued its efforts to eliminate inequities and problems created by the initiation of the Supplementary Security Income program. On four separate occasions during the year, Congress approved legislation to modify various provisions of the program which was originally enacted into law as part of the Social Security Amendments of 1972 (P.L. 92-603).

P.L. 93-256 extended the time during which SSI benefits could be paid to persons on the basis of presumptive disability. Under former law, the states had until March 31 to complete redeterminations on all disabled persons "grandfathered" into the new cash assistance program on January 1. Several states reported that they would be unable to complete eligibility determinations on many clients because of the large backlog of cases. Congress responded by enacting P.L. 93-256 which extended the deadline for cut off of SSI payments to such recipients from March 31 to December 31, 1974.

P.L. 93-335 extended for an additional twelve months (until July 1, 1975) the eligibility of supplementary security income recipients for food stamps. This marked the second time Congress had delayed implementation of a requirement that makes SSI recipients ineligible for food stamps in any month in which their SSI payment plus the state's supplement are at least equal to the welfare payment, plus the bonus value of food stamps the individual would have been eligible to receive under the state's plan in effect on December 1, 1973.

Several months later, a series of amendments to Title XVI (SSI) and XIX (Medicaid) were adopted by Congress. These amendments, attached as a rider to a minor tariff bill (P.L. 93-368), had the following effects:

• *The federal government is authorized to reimburse states for assistance to individuals*

who have applied for but have not received SSI benefits. The purpose of this amendment is to assure states that they will be reimbursed for any emergency aid given to persons awaiting determination of their SSI eligibility. Pressure for this change in the law was generated by the substantial delays experienced in processing claims during the early months of the program and the unwillingness of some states to provide emergency assistance knowing that they would not be reimbursed if the individual's claim was disallowed.

Under prior law, SSI recipients were paid from the date of application. But the states were forced to collect back any emergency aid from the recipient once SSI benefits were approved. Under the new amendments, the states may insist that the applicant agree to have any emergency state aid withheld from future federal SSI checks and paid directly to the state agency.

• *Federal SSI beneficiaries will receive an automatic cost of living increase whenever there is a similar increase in social security benefits.* The amendment, which goes into effect on July 1, 1975, provides a permanent solution to the problem of "passing through" SSI benefit increases to recipients.

• *The existing provision for 100 percent federal funding for training and compensating state inspectors of skilled nursing homes and intermediate care facilities under Medicaid is extended for three additional years.*

• *The existing mandatory requirement that states impose an enrollment fee on the medically needy is removed.* States may, if they choose, continue to require an enrollment fee but it is no longer mandatory that they do so. Only those states with Title XIX plans which cover the medically indigent—those who have too much income to qualify for cash assistance but not enough to pay for their medical care—are affected.

Finally, in early November, President Ford signed into law (P.L. 93-484) an amendment to the Supplementary Security Income program which provides that an individual living in a non-profit retirement home or similar institution will not have his SSI benefits reduced because of support or maintenance provided by the facility or another non-profit organization. The new amendment, originally introduced by Senator Frank Church (D-Idaho), was attached as a rider to a minor bill (H.R. 13631) dealing with import duties on horses.

Under prior law any support or maintenance furnished by a non-profit organization on behalf of an individual living in a facility was counted as unearned income to the individual; as a result, all amounts over the income disregard ($20 a month) resulted in a dollar-for-dollar reduction in the individual's SSI payment. The new amendment does not affect public or proprietary facilities or so-called lifetime care plans, where an individual turns over his assets to a non-profit institution in prepayment for all or a portion of lifetime care.

Although the new amendment makes no mention of facilities for the mentally retarded or other disabled persons (and the committee report is also silent on this matter), the Social Security Administration has interpreted the language to include persons in such facilities. Thus, the new amendment should help disabled residents of non-profit group homes and similar facilities who were previously found to be ineligible because the sponsoring non-profit organization underwrote a portion of the costs of room and board.

E. HEALTH

National Health Planning and Resources Development Act of 1974 (P.L. 93-641)

The basic purpose of this legislation is to establish a national health planning process and a health resources development system for the Nation. P.L. 93-641 contains the following major provisions:

• establishes a nationwide network of public and non-profit agencies, called Health Systems Agencies (HSA), to be responsible for health and mental health planning and resource development in specified geographic areas;

• requires the states to create State Health Planning and Development Agencies to perform health planning and development functions; these agencies, in turn, will receive advice from State Health Coordinating Councils;

• establishes a National Health Planning and Information Center;

• creates a National Advisory Council on Health Planning and Development to advise the Secretary of HEW;

• authorizes federal aid to the states for health planning and development.

The Health Systems Agencies, which will replace existing comprehensive health planning agencies and regional medical programs, will be responsible for reviewing and approving or disapproving all federal health and mental health grants, contracts, loans and loan guarantees made under the Public Health Service Act (except research and training grants), the Community Mental Health Centers Act and the Comprehensive Alcohol Abuse and Alcoholism Act.

State Health Planning and Development Agencies will be responsible for reviewing the need for new institutional health services (including mental health facilities and intermediate care facilities serving the mentally retarded) and issuing certificates of need. The SHPDA also will be responsible for developing the state health services plan in cooperation with the State Health Coordinating Council.

P.L. 93-641 also replaces the Hill-Burton program with a new authority for modernizing medical facilities, constructing outpatient facilities, converting existing facilities to new health delivery purposes and constructing new inpatient facilities in areas which have experienced rapid growth. Formula grants, based on population, financial need and need for health facilities, are authorized and can be used by the states for grants, loans, loan guarantees and interest subsidies. $125 million is authorized for the program in FY 1975, $130 million in FY 1976 and $135 million in FY 1977.

In addition to these general changes in the Hill-Burton program, P.L. 93-641 also authorizes the Secretary of HEW to make grants "for construction or modernization projects designed to (1) eliminate or prevent imminent safety hazards as defined by Federal, State, or local fire, building or life safety codes or regulations, or (2) avoid noncompliance with state or voluntary licensure or accreditation standards" (Section 1625, Part D, Title XVII, Public Health Service Act). Grants may be made to any medical facility owned and operated by any state or political subdivision of a state, including cities, towns, counties, boroughs, hospital districts or public or quasi-public corporations.

The amount of grant support under Section 1625 may not exceed 75 percent of the cost of the construction or modernization project, except in urban or rural poverty areas. In such poverty areas, grants may cover up to 100 percent of the costs. The Secretary may not approve a grant application unless the state health planning and development agency has determined that the applicant could not complete the project without such assistance. Twenty-two percent of the funds appropriated annually under the revised Hill-Burton program must be earmarked for projects under Section 1625.

Health Program Extension Act of 1973 (P.L. 93-45)

P.L. 93-45 extended for one additional year (through June 30, 1974) authorizations for twelve Federal health programs, including the Developmental Disabilities Services and Facilities Construction Act, the Hill-Burton program, the Community Mental Health Centers Act and the Comprehensive Health Planning program. FY 1974 authorizations for the Developmental Disabilities program included $32.5 million for formula grants to the states and $9.25 million for training and demonstration grants to university affiliated facilities. $20 million was authorized for the construction of community mental health centers and $49.1 million for staffing such centers.

P.L. 93-45 also provides that programs supported through federal health funds may not require individuals or agencies to perform abortions or sterilization procedures against their "religious beliefs or moral convictions." Agencies receiving federal health funds may not discriminate in employment against any physician or other health care specialist because he or she has performed or assisted in the performance of an abortion or sterilization procedure.

Maternal and Child Health Amendments (P.L. 93-53)

A rider, attached to the debt ceiling bill, extended the maternal and child health project grant authority for one additional year. Prior to enactment of the legislation, the MCH project grant authority was scheduled to expire on June 30, 1973. The ratio of appropriations then would shift to 90 percent for formula grants and 10 percent for research and training grants. At the time of enactment 50 percent was allocated for formula grants, 40 percent for project grants and 10 percent for research and training grants. In other words, the effect of the 1973 amendment was to delay for one additional year the transfer of project funds and responsibility to the states.

To ease the fiscal impact of the transition, particularly in large, urbanized states where MCH projects tend to be concentrated, during FY 1974 each state was authorized to receive the greater of either the total of FY 1973 project and formula grants or the amount the state would have received had the project grant authority not been extended for one year. In FY 1975 and succeeding years, no

state would receive less funds than it got in FY 1973 for both MCH project and formula grants. A provision for ratably reducing state allotments was included to account for any fiscal year in which appropriations were insufficient to meet the full authorized amount.

The states were required to make arrangements to provide for the continuation of services to groups previously receiving assistance through MCH-CC project grant funds after June 30, 1974.

F. APPROPRIATIONS

Second Supplemental Appropriations for FY 1973 (P.L. 93-50)

P.L. 93-50 increased appropriations for grants to the states under the Vocational Rehabilitation program from $560 million to $590 million. The Act also included a special appropriation of $13.8 million to restore the amount of FY 1972 funds lost because of delays in awarding research and demonstration contracts under the Education of the Handicapped Act. This amount, along with $12.5 million in regular FY 1973 appropriations, was made available through September 30, 1973.

Labor-HEW Appropriations for FY 1974 (P.L. 93-192)

The regular Labor-HEW appropriations measure for FY 1974 included a total of $32.5 billion for programs operated by the two departments. However, Congress granted the President authority to withhold up to $400 million from those programs which exceeded his original budget requests—provided no more than five percent was withheld from any one program.

Among the HEW programs which were increased above the President's original budget were the state grant programs for the developmentally disabled and education of the handicapped and the research activities of the National Institute of Neurological Diseases and Stroke and the National Institute of Child Health and Human Development.

Supplemental Appropriations for FY 1974 (P.L. 93-245)

Just before adjourning for the year, Congress passed a final supplemental appropriations measure which contained increased funds for vocational rehabilitation programs. The largest increase came in the basic state grant program which was raised from the $615 million requested by the Nixon Administration to $630 million. Training funds and service project grants were also increased by $7.4 million and $4 million respectively.

Labor-HEW Appropriations for FY 1975 (P.L. 93-517)

The regular HEW-Labor Appropriation measure for FY 1975 includes $33 billion in operating funds for the two departments.

Among the major increases provided for in P.L. 93-517 were:

- restoration of vocational rehabilitation training, innovation and expansion grants, both of which had been scheduled for phase out by the Administration;
- a $4 million increase in materal and child health research and training funds—most of which was earmarked for university affiliated facilities serving developmentally disabled persons;
- increases in the research programs of several of the National Institutes of Health.

Supplemental Appropriations, FY 1975 (P.L. 93-554)

This legislation appropriated FY 1975 funds for most of the programs operating under the Office of Education, including aid for educating handicapped youngsters. Grants to the states for the education of handicapped children were more than doubled—from $47.5 million in FY 1974 to $100 million in 1975, plus an identical amount in FY 1976 The principle motivation for this sharp increase came from the enactment of the Mathias "emergency funding amendment" (see p. 3).

Also included in the $8 billion plus supplemental bill was initial funding under Housing and Community Development Block grants and $100 million for Housing Loans for the Elderly and Handicapped under Section 202 of the Housing Act. (see p. 8).

G. TRANSPORTATION

Federal Aid Highway Act of 1973 (P.L. 93-87)

P.L. 93-87 authorizes the Secretary of Transportation to make grants and loans to private nonprofit corporations to assist "in providing transportation services meeting the special needs of elderly and handicapped persons" who cannot use mass transportation facilities. Previously, applicants for such grants were restricted to state and local agencies. In addition, the 1973 amendments permit the Secretary to earmark up to 2 percent (previously 1½ percent) of the Urban Mass Transportation Fund for special transportation services benefiting the elderly and handicapped.

The Federal Aid Highway Act of 1973 also authorizes $65 million to provide necessary

facilities to make the metropolitan Washington subway and transit system accessible to handicapped individuals. In addition, the Secretary of Transportation is directed not to approve any state highway safety program which fails to provide "adequate and reasonable access for safe and convenient movement of the physically handicapped, including those in wheelchairs, across curbs constructed or replaced at all pedestrian crosswalks after July 1, 1976."

Amtrak Improvement Act of 1973 (P.L. 93-146)

The Rail Passenger Service Act of 1970 is amended to empower the Amtrak Corporation to take necessary steps to assure that elderly and handicapped persons are not denied access to intercity rail transportation. The Corporation is specifically authorized to design and acquire special equipment and facilities, conduct special training courses for employees, eliminate existing architectual barriers, and provide assistance to elderly and handicapped persons in boarding and alighting in terminal areas.

National Mass Transportation Assistance Act of 1974 (P.L. 93-503)

Passage of this legislation marks the first time Congress has approved a broad based program of federal aid for urban mass transit systems. Among other requirements of the new program, the Secretary of Transportation may not approve any project application unless it includes assurances that rates charged elderly and handicapped persons during non-peak hours will not exceed one-half the generally applicable rate for other persons during peak hours. In addition, local municipalities may transport elderly and handicapped persons free of charge and still be eligible for federal aid under the new program.

Federal-Aid Highway Amendments of 1974 (P.L. 93-643)

This Act declares, as a national policy, "that elderly and handicapped persons have the same right as other persons to utilize mass transportation facilities and services..." and calls for "special efforts...in planning, design, construction, and operation of mass transportation facilities and services so that the availability to elderly and handicapped persons of mass transportation which they can effectively utilize will be assured...".

H. OTHER

Lead Based Paint Poisoning Prevention Amendments (P.L. 93-151)

P.L. 93-151 extends the Lead Based Paint Poisoning Prevention Act for an additional two years (through June 30, 1975) and increases the federal matching ratio for detection and treatment grants from 75 percent to 90 percent. In addition, the Secretary of Housing and Urban Development is authorized to carry out a research and demonstration program to determine the nature and extent of the lead poisoning problem.

The Act directs the Secretary of HUD to eliminate lead hazards in federally assisted housing built prior to 1950 and prohibits the use of lead based paint in the construction of facilities and the manufacture of certain toys and utensils. Finally, the permissible level of lead in paint products is lowered from one percent to ½ of one percent until December 31, 1974; after that date, lead levels may not exceed .06 of one percent, pending the outcome of a study by the Consumer Protection Safety Commission.

Older Americans Comprehensive Services Amendments of 1973 (P.L. 93-29)

P.L. 93-29 amends and extends the Older Americans Act of 1965. Among the new responsibilities of the Commissioner of Aging is to award grants and contracts to model statewide, regional and community projects. In making such grants, the Commissioner is directed to give special attention to a number of areas, including services to meet the particular needs of physically and mentally impaired older persons.

The Commissioner is also required to conduct a special study and support demonstration projects related to the transportation problems of older Americans, including those with mobility restrictions.

Domestic Volunteer Service Act of 1973 (P.L. 93-113)

P.L. 93-113 consolidates all domestic volunteer services managed by the ACTION agency under a single legislative authority. Among the programs authorized in the new Act are: VISTA (Volunteers in Service to America), University Year in ACTION, Special Volunteer Programs, Retired Senior Volunteer Program (RSVP), Foster Grandparent Program and the SCORE (Service Corp of Retired Executives) and ACE (Active Corp of Executives) programs. Prior to enactment of P.L. 93-113, these programs were authorized under several different federal statutes.

The legislation adds a new authority which permits the Director of ACTION to make grants and contracts to support volunteers who are aiding adults with "exceptional needs," including "senior

companions" helping persons with developmental disabilities. This new provision was added to compliment the Foster Grandparent Program which is focussed on assisting needy and handicapped childern.

The Director of ACTION may assign VISTA volunteers to one of several settings, including projects or programs "in the care and rehabilitation of mentally ill, developmentally disabled, and other handicapped individuals, especially those with severe handicaps, under the supervision of non-profit institutions or facilities...".

Authorizations for each of the voluntary service programs are provided through June 30, 1976.

National Autistic Children's Week (P.L. 93-42)

P.L. 93-42 authorized the President to declare the week beginning June 24, 1973 as "National Autistic Children's Week."

National Research Act (P.L. 93-348)

Reflecting the growing national concern over the adequacy of current procedures for reviewing and monitoring research projects involving human subjects, Congress enacted a bill calling for the establishment of an eleven member Commission on Protection of Human Subjects of Biomedical and Behavioral Research.

The Commission, to be appointed by the Secretary of HEW, will carry out the following functions:

- undertake a comprehensive investigation to identify the basic ethical principles which should underlie the conduct of biomedical and behavioral research involving human subjects and to develop guidelines for implementing these principles;

- to recommend necessary administrative actions to the Secretary;

- toconsider: (a) guidelines for the selection of subjects to participate in research projects; (b) the nature and definition of informed consent in various settings; (c) the role of assessment of risk benefit criteria in determining the appropriateness of research involving human subjects; (d) mechanisms for evaluating and monitoring the performance of Institutional Review Boards and enforcement mechanisms; and (e) the boundaries between research involving human subjects and the routine practice of medicine;

- to make recommendations on the requirements for informed consent for participation in biomedical and behavioral research by children, prisoners, and the institutionalized mentally infirm;

- to investigate the need for a mechanism to protect subjects in research projects not funded by HEW;

- to study the extent of, and the need for, research involving living fetuses;

- to conduct a study of the use of psychosurgery in the United States;

- to make recommendations to Congress on the functions and authority of the National Advisory Council for the Protection of Subjects of Biomedical and Behavioral Research.

The Commission, established under Title II of the Act, is required to complete its work within 24 months and then go out of existence. It will be replaced by the National Advisory Council. The Council, which will be established on July 1, 1976, will be composed of not less than seven nor more than fifteen individuals selected from the fields of medicine, law, ethics, theology, the biological, physical, behavioral and social sciences, philosophy, humanities, health administration, government and public affairs. It will be chaired by the Secretary of Health, Education, and Welfare and have as its primary purposes: (1) advising the Secretary on all matters pertaining to the protection of human subjects of biomedical and behavioral research; (2) reviewing existing policies and regulations to determine whether they conform to ethical principles for the conduct of human research; and (3) studying the longitudinal changes taking place in biomedical and behavioral research in order to determine their effects on current policies.

Title I of the Act is designed to stimulate improved biomedical and behavioral research by authorizing a system of National Research Service Awards.

National School Lunch and Child Nutrition Act Amendments of 1974 (P.L. 93-326)

The Act extends and expands the National School Lunch Act which makes food assistance available to eligible children, including handicapped children, in public and non-profit schools. Among the highlights of the 1974 Amendments are the following:

• special authority directing the Secretary of Agriculture to purchase food commodities for donation to school lunch and other nutrition programs for children and the elderly is extended through fiscal year 1975;

• schools are to receive a minimum of 10 cents per lunch, either in donated food or cash assistance during FY 1975 and succeeding fiscal years;

• the authority which states now have to serve reduced price lunches to children from families with incomes up to 75 percent above the official income poverty guidelines is made a permanent feature of the Act;

• the authorization for school food service equipment is increased from $20 million to $40 million in FY 1976 and succeeding fiscal years;

• the required expenditure for the special supplemental food program for women, infants and children is increased from $40 million to $100 million during FY 1975 only.

Juvenile Delinquency and Prevention Act of 1974 (P.L. 93-415)

This new Act, which is the successor to the old Juvenile Justice and Delinquency Prevention Act of 1972 (P.L. 92-381), authorizes formula grants to the states for the development and expansion of preventive and treatment services for juveniles. One of the requirements to qualify for federal assistance is that the states must give assurances that such assistance will be made available on an equitable basis to deal with all disadvantaged youth, including the mentally retarded and the emotionally and physically handicapped.

The formula for distributing funds among the states is based on relative population under 18 years of age, per capita income and the incidence of delinquency. The minimum state allotment is $200,000.

P.L. 93-415 specifies that 25 to 50 percent of formula grant funds must be earmarked by HEW for special emphasis grants in the area of prevention and treatment and contracts with public and private agencies, organizations and institutions to: (1) develop and implement new approaches to juvenile delinquency programs; (2) develop and maintain community based alternatives to institutionalization for juveniles; (3) improve the capacity of private and public agencies and institutions to offer services for delinquents and troubled youth; and (4) facilitate adoption of the recommendations of the National Advisory Committee and the Institute for Delinquency Prevention and Juvenile Justice. The new legislation authorizes $75 million in FY 1975, $125 million in FY 1976 and $150 million in FY 1977 for grants to the states.

In addition to authorizing grants to the states, the new legislation:

• establishes an Office of Juvenile Justice and Delinquency Prevention in the Justice Department;

• establishes a Coordinating Council on Juvenile Justice and Delinquency Prevention made up of key federal officials;

• sets up a National Advisory Committee composed of professional as well as citizen and youth representatives;

• creates a National Institute for Delinquency Prevention and Juvenile Justice to function as an information clearinghouse and to aid in manpower development;

• sets up a National Institute of Corrections within the Bureau of Prisons in the Justice Department;

• authorizes federal assistance for programs designed to meet the needs of runaway youth and their families.

March of Dimes Birth Defects Prevention Month (P.L. 93-561)

This legislation authorized the President of the United States to designate January, 1975 as "March of Dimes Birth Defects Prevention Month" and urges the Governors of the fifty states and territories to take similar action.

Community Services Act of 1974 (P.L. 93-644)

This new law abolishes the Office of Economic Opportunity and replaces it with the Community Services Administration, an independent federal agency. After March 15, 1975, the President, if he so desires, may submit to Congress a reorganization plan to make the Community Services Administration a part of the Department of Health, Education and Welfare. However, this plan must conform to requirements set out in the statute, including the stipulation that the agency head be directly responsible to the Secretary. Congress may reject the President's reorganization plan within 60 days of its submittal by majority vote of both the House and the Senate.

The Community Services Administration will be responsible for carrying out the community action program, the community food and nutrition program, the senior opportunities and services program, the rural housing, development and rehabilitation program as well as several other programs formerly run by OEO. Other programs authorized under the former Economic Opportunity Act are delegated to the Departments of HEW, Labor and Commerce.

The Head Start program is delegated to HEW which has been administering the program under an agreement with OEO since 1969. In addition, the Head Start program is extended through fiscal year 1977.

The formula for distributing Head Start funds is revised and the requirement for involving handicapped youngsters in the program is modified. The new distribution formula will be based on the relative number of public assistance recipients in the state and the number of children in families with incomes below the poverty line. All Head Start grantees will be assured of at least the same level of federal aid as they received in FY 1974.

The requirement that ten percent of Head Start enrollment opportunities be made available to handicapped children was retained. This provision was first made part of the Act under the Economic Opportunity Amendments of 1972 (P.L. 92-424). In fiscal 1976 and thereafter, however, the ten percent stipulation will apply to each state rather than on a nationwide basis.

In their reports on the legislation, both the House Education and Labor Committee and the Senate Labor and Public Welfare Committee expressed deep concern about the manner in which many Head Start agencies were implementing the 10 percent mandate. They noted that many youngsters with mild speech impediments and other minor disorders were being classified as handicapped children in contravention of the stated intent of Congress. The Office of Child Development and Head Start grantees were directed to take necessary steps to assure that only children with disabilities severe enough to require special education and related services be classified and counted as handicapped children.

National Arthritis Act of 1974 (P.L. 93-640)

This legislation establishes a National Commission on Arthritis to develop a long range plan to combat a disease which affects an estimated 50 million Americans. The Act also attempts to stimulate increased research and achieve better coordination among all programs related to arthritis.

Regular public information programs are authorized to facilitate the dissemination of accurate, up-to-date information on diagnostic and treatment procedures. In addition, provision is made for the establishment of arthritis screening, early detection, prevention and control programs and comprehensive arthritis centers to serve as a focal point for research and manpower development.

Finally, P.L. 93-640 provides for the establishment of an arthritis screening and detection data bank and for the dissemination of the data collected.

III. BILLS CONSIDERED BUT NOT ENACTED BY THE 93rd CONGRESS

During the 93rd Congress a total of 17,688 bills were introduced in the House and 4,260 in the Senate. A surprising number of these measures had some implications for handicapped persons. Obviously, it would be a monumental task to review all of these bills. Therefore, in this chapter, an attempt is made to summarize only the most important legislation introduced and its status as of the close of the past session. Unless otherwise indicated, the bills mentioned were referred to the appropriate Congressional committee and no further action was taken on them during the session.

EDUCATION FOR ALL HANDICAPPED CHILDREN ACT

In May, 1972, Senator Harrison Williams (D.-N.J.), along with 20 co-sponsors, introduced a bill (S. 3614) which called for sharp increases in federal aid for special education services to handicapped children. Similar legislation was introduced in the House by Congressman John Brademas (D-Ind.) several months later. In essence, the Williams-Brademas bills would have authorized the federal government to reimburse states for 75 percent of the excess costs of educating handicapped youngsters. In order to qualify for such aid, a state would have had to submit an acceptable plan for: (a) identification of all handicapped children in the state; (b) complete and appropriate services to such children by 1976; and (c) safeguarding the rights of children and their parents in the provision of special education programs.

Both Senator Williams and Representative Brademas reintroduced somewhat modified versions of their bills (S.6; H.R. 70) early in 1973. However, despite extensive hearings in both Houses neither the Senate nor the House enacted the legislation during the 93rd Congress.

The chief stumbling block to passage of the bills was the multi-billion dollar cost of the proposed program and the controversy surrounding the development of an equitable excess cost formula. When it became apparent that Congress was hopelessly deadlocked over these features of the Williams-Brademas bills, a temporary, one-year increase in the authorization levels under the existing formula grant program was included in the Education Amendments of 1974 (see p. 3). This move was viewed as a stop-gap measure to assist hard-pressed school systems to improve their special education programs pending the development of a compromise version of the Williams-Brademas legislation.

DEVELOPMENTAL DISABILITIES

One of the casualties of the last minute rush for adjournment of the 93rd Congress was a bill to extend and amend the Developmental Disabilities Services and Facilities Construction Act. During 1974, both the House and the Senate passed their own versions of extension legislation (H.R. 14215 and S.3378). However, efforts to hammer out a compromise bill fell victim to the time crunch in the waning days of the session.

The major area of disagreement concerned Title II of the Senate Bill which included detailed federal standards for the operation of residential and community facilities for the developmentally disabled. The House refused to accept any portion of Title II in the final measure. Senate representatives were equally tenacious in demanding at least a "foot-in-the-door" to federal standard setting.

With neither side prepared to give, the bills died with the adjournment of the 93rd Congress. Before the close of the session, however, Congress did enact a continuing resolution to permit operation of the program until a legislative compromise could be worked out in the 94th Congress.

CHILD AND FAMILY SERVICES ACT

Efforts to enact a broad-based program of federal aid to early childhood development programs continued in the 93rd Congress. However, in spite of strong support from child welfare and day care organizations, the prospects for passage of the legislation, which reached a peak

in 1971 when President Nixon vetoed a similar measure, appeared to be diminishing.

The chief sponsors of the legislation in the 93rd Congress were Senator Walter Mondale (D-Minn.) and Representative John Brademas (D-Ind.). One key feature of both bills (S.3754; H.R. 15883) was a requirement that at least ten percent of federal grant funds be used to serve handicapped children.

NATIONAL HEALTH INSURANCE

On several occasions during the past four years Congress has appeared on the verge of dealing seriously with the problem of overhauling the Nation's antiquated and inefficient health care system. Some preliminary steps in this direction were taken by the 93rd Congress–including passage of the National Health Planning and Resources Development Act of 1974 (see p. 14) and the Health Maintenance Organization Act of 1973. However, faced with strong cross-currents of inflation and recession in the national economy and sharply divided public opinion, Congress once again backed away from the central issue of how to assure American citizens equal access to quality health and medical care at a reasonable cost to the taxpayers.

The Nixon Administration's revised health insurance plan (see below) was unveiled with a good deal of fanfare early in 1974. But, as the economy turned sluggish and the President's political problems began to mount, it became clear that the White House had little interest in pushing its plan in Congress.

A wide variety of health insurance bills were submitted in the 93rd Congress. The following were among the key proposals introduced:

- *The Health Security Act* (S.3-Kennedy and H.R. 22 Griffith)—would establish a government controlled national health insurance system, financed largely through increased Social Security taxes.

- *Catastrophic and National Health Reform Act* (S.2513-Long)—would authorize a government underwritten program to cover the cost of catastrophic illness, replace the Medicaid program with a new federal medical assistance plan for low income Americans and provide cost control incentives for private insurance firms.

- *Comprehensive Health Insurance Act* (S.2970-Packwood)—A Nixon Administration plan which would require most employers to purchase a federally prescribed minimum health insurance package for each employee from a private health insurance company. The plan also would authorize a government financed medical assistance program for low income families and state regulation of private health insurance firms under federal guidelines.

- *Comprehensive National Health Insurance Act* (S.3286-Kennedy; H.R. 13870-Mills)—would: (a) establish a national health insurance program financed through increased Social Security taxes (but with less extensive coverage and benefits than those provided under the Health Security Act); (b) improve Medicare benefits, including provision for a long term care program; and (c) authorize incentives for the development of needed health care resources.

Thus far, most of the major health insurance proposals have concentrated on the acute care needs of the American public and have either ignored or provided limited coverage for persons with long term, chronic conditions. Even the bills which focused exclusively on long term care - e.g. Representative Conable's plan for creating community long term care centers (H.R. 13720) and Senator Humphrey's Chronicare bill (S.393) - were concerned mainly with the continuing health needs of the elderly. Little attention was given in the legislation to the chronic health care needs of handicapped Americans.

TAX DEDUCTIONS FOR THE HANDICAPPED

As has been the pattern for the past twenty years, scores of bills were introduced to grant additional tax deductions to handicapped individuals and taxpayers supporting handicapped children or adults. In the 93rd Congress the proposals ranged from measures to give a special tax break to handicapped workers who incur unusual transportation costs traveling to and from their jobs to bills entitling taxpayers who support a mentally or physically handicapped person to an additional income tax exemption or special tax deductions for education and training expenses.

With Congress deadlocked over major tax reform proposals, however, these bills received little attention.

SUPPLEMENTARY SECURITY INCOME AMENDMENTS

Even before the complex new Supplementary Security Income program became operational on January 1, 1974, a large number of bills had been introduced in Congress to modify various features of the program. By the end of the year, a veritable

torrent of measures were being submitted to eliminate perceived inequities in the new federalized system of payments to needy aged, disabled and blind Americans.

Most of these bills were addressed to: (a) protecting aged and disabled persons who had been blanketed into the new program from loss of spendable income; (b) eliminating inequities caused by the interaction between SSI and other related federal social programs (Medicaid, social services, food stamps, etc.); or (c) reducing the error rate and streamlining the eligibility determination process. In 1973 and 1974 Congress passed several measures designed to correct some of the most glaring inequities in the program (see pp. 9, 11 and 13). However, a number of other proposals died at the close of the 93rd Congress.

Among the unenacted bills was a measure (S.3908) introduced by Senator Taft (R-Ohio) to make a number of modifications in the SSI program as it affects disabled applicants and recipients.

AUTISTIC CHILDREN

Senator Hollings (D-S.C.) re-introduced legislation to authorize an accelerated research and development program for care and treatment of autistic children. This measure provided for: (a) a comprehensive research program; (b) grants and loans to public and non-profit groups proposing to operate a residential facility with educational programs for autistic children; and (c) an additional $750 exemption for any taxpayer supporting an autistic child.

HEALTH REVENUE SHARING

On December 21, 1974, President Ford vetoed the Health Revenue Sharing and Health Services Act of 1974 (H.R. 14214). In his veto message the President criticized the excessive authorization levels in the measure and the inclusion of several new programs during a period of fiscal austerity.

Incorporated in the vetoed bill were provisions extending and amending existing authority to construct and staff community mental health centers. Under the final bill, five types of project grant assistance would have been available to the states (planning, initial operation, consultation and education, conversion, and financial distress) and one type of formula grant to state mental health agencies (facilities assistance). H.R. 14214 also would have extended the general health project grant authority along with a provision earmarking 15 percent of such grant funds for mental health services.

A National Commission on Epilepsy would have been established under another provision of the vetoed measure. This nine member Commission, originally proposed in bills introduced by Senator Dominick (R.-Colo) and Representative Kyros (D-Me.), would have been charged with developing a national plan for the control and treatment of epilepsy.

EPILEPSY AND MULTIPLE SCLEROSIS

Representative Marvin L. Esch (R.-Mich.) introduced a bill (H.R. 17002) entitled "The National Multiple Sclerosis and Epilepsy Act of 1973". The bill would have enlarged the authority of the National Institute of Neurological Diseases and Stroke to advance a national attack on multiple sclerosis, epilepsy, muscular dystrophy and other diseases. Included was authority for epidemiological, etiological and preventive investigations into all forms of neurological disorders and the establishment of fourteen clinical research and treatment centers nationwide to demonstrate and test new patient management techniques.

IV. KEY FEDERAL REGULATIONS ISSUED DURING 1973 AND 1974

The growing importance of the federal regulatory process is a clear barometer of the shift toward Executive Branch dominance of national policy setting in the twentieth century. As the number and complexity of federal programs has grown, the capacity of Congress to exercise real control over the intricacies of federal policy making has waned. Despite recent signs of more intensive Congressional scrutiny of the administration of federal programs (see Chapter I), it seems doubtful that Congress is prepared to delimit to any significant degree, the regulatory powers of federal agencies.

Last year, the *Federal Register* contained over 45,000 pages of regulations, policies and notices promulgated by scores of federal departments and agencies. Practically each day's edition of the *Register* contained one or more sets of regulations or administrative policy with implications for the estimated forty-five million handicapped Americans. Under the circumstances, it is impossible, in this brief report, to summarize all of the hundreds of policies affecting the handicapped during 1973 and 1974. Therefore, in reviewing regulations issued by various federal agencies, we have selected only those program policies with broad implications for handicapped children and adults. Even from this limited sample, we have been forced to highlight just the salient features of these regulations, because of the length, complexity and highly technical nature of many of these rules.

For the convenience of readers who are interested in pursuing any of these regulations further, exact citations to the *Code of Federal Register* have been included. Most good public and university libraries maintain an up-to-date compilation of the *Federal Register*. In addition, the administering federal agency generally makes reprints available to any citizen upon request.

The development and revision of federal regulations and policies is a continuous process. Therefore, it should be emphasized that the report covers only regulations issued between January 1, 1973 and December 31, 1974. However, where we are aware of significant revisions which have been issued during the early months of 1975, this fact is footnoted to assist the reader.

Because several separate regulations dealing with the same federal program may have been issued over the period, we have divided the summary by program area rather than chronologically. It is our belief that this approach will permit the reader to gain a better perspective on closely related developments over the two year period.

INTERMEDIATE CARE FACILITIES

During the closing days of the 1st Session of the 92nd Congress (December, 1971), legislation was enacted (P.L. 92-223) transferring authority for intermediate care facilities (ICF) services from from Title XI to Title XIX of the Social Security Act and extending ICF benefits to residents of public residential facilities for the mentally retarded.

In order to qualify as a Title XIX facility, P.L. 92-233 stipulates that: (1) the primary purpose of the institution must be the provision of "health or rehabilitative services for mentally retarded individuals;" (2) the facility must meet standards established by the Secretary of HEW; (3) all eligible residents must be receiving "active treatment"; and (4) the state must maintain its current level of non-federal expenditure on behalf of ICF eligible residents.[2]

On March 5, 1973, HEW issued tentative regulations (38 CFR 5974) governing intermediate care facility services to eligible recipients, including individuals in public residential facilities for the mentally retarded. These proposed rules stirred considerable controversy within the field and elicited numerous comments from state health, welfare, mental health and mental retardation agencies, consumer groups and provider agencies. Most critics of the tentative regulations focused on their excessive emphasis on health and

[2] This latter provision was subsequently modified to limit the maintenance of effort requirement to Title XIX services rendered before January 1, 1975 (P.L. 92-603).

medical care (as opposed to developmental programming) and the requirement that all specialized ICF-MR facilities meet the standards for residential facilities of the Joint Commission on Accreditation of Hospitals by July 1, 1976.

Final intermediate care regulations were issued by HEW on January 17, 1974 (39 CFR 2220). The requirement that facilities for the mentally retarded meet JCAH standards was dropped from the final regulations. Instead, a modified set of program standards, modeled after the "essential" (or A level) standards of the Joint Commission, were written into the regulations.

Facilities for the retarded must comply with these modified standards by March, 1977. In the meantime, to qualify for Title XIX reimbursements, ICF-MR facilities must meet general ICF standards (within certain modifications) plus several special requirements.

Beside program standards, the January 17 regulations contain: (a) other detailed conditions of eligibility; (b) definitions of terms; (c) rules for federal ICF reimbursements; (d) requirements for independent professional review of ICF facilities; and (e) certification procedures.

Later in the year the Health Services Administration issued ICF program guidelines, including a specialized set of guidelines applicable to ICF-MR facilities *(Guidelines for Intermediate Care Facility Standards for Institutions for the Mentally Retarded, July 1974)*. Designed to explain the intent of the January 17 regulations, these guidelines broke little new ground in the articulation of federal ICF policies.

SOCIAL SERVICES

In a bewildering series of moves and counter moves Congress and the Nixon Administration spent most of 1973 battling over control of the federal-state social services program.

Alarmed by the projected growth in social services expenditures under Titles IV A and VI of the Social Security Act and the lack of a clear focus on welfare clients, the Administration issued restrictive new program regulations (38 CFR 4608) on February 16, 1973. These tentative rules were designed to: (a) limit potential eligibility to clients likely to be welfare recipients within six months; (b) establish a strict means test for determining eligibility; (c) eliminate the "special needs" category; (d) prohibit the use of privately donated funds for matching purposes; and (e) limit state matching funds to new appropriations.

In response to a flood of protests from consumer groups, child care providers and state agencies, HEW revised the February regulations before issuing them in final form on May 1 (38 CFR 10782). However, many of the restrictive features were retained and, despite further modifications in June (38 CFR 14375), Congress finally got into the act and approved a four-month moritorium on the implementation of new social services regulations in early July (see p. 9).

A further set of proposed social services regulations were issued by HEW in early September (38 CFR 24872). These regulations, which included several provisions designed to make an increased number of mentally retarded persons eligible for social services, were later revised and issued in final form on October 31, 1973 (38 CFR 30072).

By this time, however, a majority of Congress was convinced of the need for substantial revisions in the statute authorizing social services aid to the states. Because a consensus had not yet been reached on the ways in which the law should be changed, Congress approved legislation in the waning days of the session extending the moritorium on implementation of new social services regulations through December 31, 1974. (see p. 13).

During the spring and summer of 1974, a compromise social services bill was developed by a coalition of national organizations, key Congressional leaders and HEW officials. This bill was eventually enacted into law (P.L. 93-647) in the closing days of the 93rd Congress (see p. 11).[3]

SUPPLEMENTARY SECURITY INCOME

Between the summer of 1973 and the spring of 1974, an extensive series of proposed rules governing the Supplementary Security Income program appeared in the *Federal Register* as the Social Security Administration began implementing the complex, new federal assistance program for needy aged, blind and disabled individuals. It is not possible in this brief report to do more than highlight a few key regulatory and administrative policies affecting disabled persons which were promulgated by HEW during this period.

The SSI regulations are divided into the following eighteen subparts:

Subpart A - Introduction, General Provisions, and Definitions
Subpart B - Eligibility
Subpart C - Filing of Applications and Other Forms
Subpart D - Amount of Benefits

[3] Tentative regulations implementing P.L. 93-647 were issued on April 14, 1975 (40 CFR 16802) and final regulations on June 27, 1975 (40 CFR 27352).

Subpart E - Payment of Benefits, Overpayment and Underpayments
Subpart F - Representative Payee
Subpart G - Reporting Requirements
Subpart H - Determination of Age
Subpart I - Determination of Disability or Blindness
Subpart J - Relationship
Subpart K - Income and Exclusions
Subpart L - Resources and Exclusions
Subpart M - Suspensions and Terminations
Subpart N - Determinations, Reconsiderations, Hearings, Appeals and Judicial Review
Subpart O - Representation of Parties
Subpart Q - Referral for Rehabilitation Services, Other Benefits, Other Services, and Assistance
Subpart T - State Supplementation Provisions; Agreements; Payments
Subpart U - Medicaid Eligibility Determinations

While most sections of the regulations apply to all applicants Subpart I, issued in tentative form on January 11, 1974 (39 CFR 1624), contains many of the specialized policies dealing with determination of the eligibility of blind and disabled persons.[4] In general, this section of the regulations: (1) defines the terms disabled and blind for purpose of SSI eligibility; (2) sets out requirements for enrolling former recipients of Aid to the Permanently and Totally Disabled into the new program; (3) outlines detailed criteria for determining disability or blindness; and (4) establishes evidentary requirements, policies for evaluating work activities as they relate to disability, and criteria for continuing disability evaluations.

Among the specific highlights of these regulations are provisions which:

- defines a "physical or mental impairment" as "an impairment which results from anatomical, physiological or psychological abnormalities which are demonstrable by medically accepted clinical and laboratory diagnostic techniques." The regulations spell out in detail the procedures for determining and verifying the existence of such conditions as mental deficiency, cerebral palsy, epilepsy, and other neurological, physiological and mental disorders.

- generally, the evaluation of a disability rests on a determination of the medical severity of the individual's handicap plus an evaluation of the person's ability to engage in substantial gainful activity. This two prong test is almost identical to one applied for many years in determining eligibility for disability benefits under Social Security.

- in determining an individual's capacity to engage in substantial gainful activity, the nature of the work, the adequacy of the individual's performance, and the individual's earnings are to be taken into account. In general, average earnings of less than $130 a month is an indication that the individual is unable to engage in substantial gainful activity while earnings of over $200 a month are generally a sign that the individual is not sufficiently disabled to meet the SSI test. The range of $130 to $200 a month is considered a gray area where other factors surrounding the individual's case must be taken into account.[5] In the latter case, however, special consideration is given to employees in sheltered workshops or comparable facilities.

- earnings of a SSI recipient may be disregarded for up to nine months if he is engaged in a period of "trial work."

Subpart Q of the regulations implements Section 1615 of the Social Security Act which requires the Secretary of HEW to make provisions for referral of disabled and blind SSI recipients to the state vocational rehabilitation agency. As an incentive to participation in rehabilitation programs, income resources necessary to help a blind or disabled individual fulfill a plan for achieving self-support may be disregarded in determining a person's continued eligibility for SSI benefits.

SHELTERED WORKSHOP LOANS

On July 31, 1973, the Small Business Administration issued tentative regulations governing a new loan program for sheltered workshops and small handicapped-owned firms (38 CFR 20351). These regulations implemented amendments added to Small Business Investment Act in 1972 (P.L. 92-595).

The term "handicapped individual" is defined and eligibility criteria and credit requirements for such loans are outlined in the regulations. Two loan

[4] Final Subpart I regulations were issued on July 29, 1975 (40 CFR 31778). Except as noted, there were no basic changes in the provisions of Subpart I as discussed here.

[5] The proposed regulations of January 11, 1974 set $140 (instead of $200) as the upper limit on monthly earnings for determining whether a disabled individual was engaged in substantial gainful activity (and $90 instead of $130 as the limit below which non-productivity would be assumed). Proposed regulations raising the earnings test for both SSI and Social Security recipients were published in September, 1974 (39 CFR 32757), however, and these regulations have since been issued in final form as part of the final disability determination rules (see footnote 3).

assistance programs are established: one for non-profit organizations which employ handicapped individuals for not less than 75 percent of the man-hours required for the production of commodities or the provision of services, and a separate program for small business concerns owned and operated by handicapped individuals.

Loans to workshops may not exceed $350,000 with a maximum maturity of 15 years and may not be used for training, education, housing, or other supportive services to sheltered workshop clients. Provision is made for both direct loans and loan guarantees. Interest on direct loans and SBA's share of an immediate participation loan is 3 percent per annum.

PROTECTION OF HUMAN SUBJECTS

The August 23, 1974 issue of the *Federal Register* contained proposed rules governing the protection of institutionalized mentally disabled persons, prisoners, fetuses and abortuses in HEW-sponsored research and development projects (39 CFR 30647). These tentative regulations were designed to supplement the general safeguards contained in final regulations on the protection of human subjects, promulgated on May 30, 1974 (39 CFR 18914).

In addition to the protections spelled out in the May 30 regulations, the proposed rules offer special safeguards for research subjects having little or no capacity to furnish informed concent. They are patterned after widely criticized draft policies, issued by the National Institutes of Health (38 CFR 31738) in November 1973.

The August, 1974 regulations contemplate the imposition of strict limits on the participation of mentally disabled persons in research, development and demonstration activities. Such investigations could involve the mentally disabled only when the objective of the project concerns: (a) the diagnosis, etiology, prevention or treatment of the disability from which the individual suffers; (b) some aspect of institutional life, per se; or (c) information which could only be obtained from such subjects.

When mentally disabled persons are used as subjects in research, development and demonstration projects, the sponsoring institution or agency would be required to: (a) provide assurances that the study could be accomplished only with the participation of the mentally disabled subjects; and (b) include a provision for the establishment and operation of a Protection Committee. In addition, the project plan would have to be reviewed and approved by an Organizational Review Committee.

The purpose of the Protection Committee is to oversee the process of selecting research subjects and monitoring the way in which they are used. The Organizational Review Committee is responsible for assessing the risk involved to human subjects in any research, development or demonstration project.

In addition to the above safeguards, no research, development or demonstration activity involving the mentally disabled could be conducted without the informed consent of the individual's legal guardian. Where the mentally disabled individual has sufficient mental competency to understand the proposed activity and express an opinion as to his or her participation, the individual's consent also would have to be obtained.

Just prior to issuance of the proposed regulations, Congress enacted the National Research Act (see p. 18) which established a Commission on Protection of Human Subjects of Biomedical and Behavioral Research. Among the Commission's functions were: (a) to make recommendations on the informed consent requirements for participation by children, prisoners and institutionalized mentally infirm persons in biomedical and behavioral research projects; and (b) to study the extent of, and the need for, research involving living fetuses. A moritorium on fetal research was imposed by HEW on August 27, 1974 (39 CFR 30962) pending receipt of the Commission's recommendation on this subject.[6]

STERILIZATION

Responding to negative publicity generated by the sterilization of two young black girls (one of whom was mentally retarded) in an OEO planned parenthood clinic in Alabama, HEW published proposed regulations (39 CFR 4729) in February, 1974 limiting the conditions under which federal funds could be used to pay for sterilization procedures involving minors and mentally incompetent persons.

A number of civil rights groups, however, objected to provisions of the February rules which would have permitted minors and incompetent individuals to be sterilized without their informed consent, under certain conditions. Two suits were filed to enjoin the Department from enforcing the February regulations. On March 15, 1974, the U.S. District Court for the District of Columbia found the regulations illegal and directed HEW to rewrite them to "insure that all sterilizations funded...are voluntary in the full sense of that term and that

[6] On August 8, 1975, HEW published in the **Federal Register** final rules governing research involving the fetus, the pregnant woman and products of human in vitro fertilization (40 CFR 33525). These regulations were based largely on the Commission's recommendations. As of September 1, 1975, the Commission was beginning its study on use of children, prisoners and mentally infirmed persons in federally funded research activities.

sterilization of incompetent minors and adults is prevented."[7]

Final regulations, conforming to the Court's directives, were issued on April 18, 1975 (39 CFR 13872).

These rules prohibit the uses of federal funds for the sterilization of any person who: (a) has been judicially declared mentally incompetent; or (b) is in fact legally incompetent under applicable State laws to give informed and binding consent, either due to age or mental capacity. The regulations also require HEW grantees performing sterilization procedures to advise patients that no federal benefits will be withdrawn or withheld if he or she decides not to be sterilized.

MINIMUM WAGES FOR HANDICAPPED WORKERS

On November 14, 1973, the U.S. District Court for the District of Columbia ordered the Department of Labor to enforce the Fair Labor Standards Act as it affects working residents in non-federal institutions for the mentally ill and mentally retarded *(Souder v. Brennen)*.

Ten months later the Department of Labor issued tentative regulations implementing the *Souder* decision. These regulations, which were published in the *Federal Register* on September 4, 1974 (39 CFR 32037), spell out the circumstances under which tasks performed by an institutional resident or patient are considered work and the criteria for issuance of sub-minimum wage certificates.

The basic criteria for determining whether an "employment relationship" exists between the facility and the patient is: is the work performed by the patient of any "consequential economic benefit" to the institution. The September 4 rules make it clear that the existence of an employment relationship is not dependent on the level of the patient's performance, the replacement or non-replacement of a non-handicapped worker or the infringement or non-infringement upon the employment opportunities of non-handicapped workers. However, under the regulations, personal housekeeping chores, such as maintaining one's own quarters, are not considered compensable activities.

A patient worker whose earnings or productive capacity is unimpaired must be paid wages commensurate with prevailing wages for similar work in the geographic area (but in no case less than the statutory minimum wage). For patient workers who are unable to earn the minimum wage, the following four types of subminimum wage certificates are authorized.

- *Evaluation and training.* Any worker subject to such a certificate must receive commensurate wages (no regulatory minimum) but the period of evaluation and training may not exceed twelve months.

- *Group minimum wage.* Under such a certificate, a patient worker must receive at least fifty percent of the prevailing minimum wage.

- *Individual exception.* Under such a certificate a patient worker may earn no less than 25 percent of the prevailing minimum wage.

- *Work activities center.* A work activities center is defined in the regulations as "...an approved program...which (is) planned and designed exclusively to provide work activities for patients whose physical or mental impairment is so severe as to render their productive capacity inconsequential." A patient worker employed under such a certificate must be paid commensurate wages; however, no regulatory wage floor is established.

The September 4 regulations also establish criteria for periodically reviewing the status of patient workers receiving sub-minimum wages, deducting for the costs of room, board and services from the patient's wages, and issuance and renewal of minimum wage certificates. Requirements for maintaining records and handling appeals and investigations are also covered in the regulations.[8]

LIMITATIONS ON PSYCHIATRIC CARE UNDER CHAMPUS

In June 1974 the Department of Defense issued an order limiting psychiatric treatment for military dependents to 120 in-patient days or 40 out-patient visits a year. After hearings were held by the Senate Permanent Subcommittee on Investigations, however, DOD rescinded the order and assured the Subcommittee that steps would be taken to monitor the quality of services rendered to military dependents.

The Department's new monitoring process involves a three step certification procedure. The contracting facility must be accredited by the Joint Commission on Accreditation of Hospitals, be reviewed by DOD officials, and show evidence that appropriate state agencies have been consulted.

[7] Relf v. Weinberger and National Welfare Rights Organization v. Weinberger.

[8] Final patient worker regulations subsequently were issued by the Labor Department on February 7, 1975 (40 CFR 5775). No basic changes were made in the proposed regulations as described above.

HOUSING

Enactment of the Housing and Community Development Act of 1974 (see p. 7) triggered the publication of a flurry of regulations late in 1974, as the Department of Housing and Urban Development raced to get rules out before the new programs went into effect on January 1, 1975. The following were among key regulations issued by HUD:

SUBJECT	ISSUING HUD OFFICE	DATE	FEDERAL REGISTER CITATION
Community Development Block Grants (final)	Office of Asst. Sec. for Community Planning and Development	Nov. 27, 1974	39 CFR 40135 [9]
Housing Assistance Payments Program - New Construction (proposed)	Office of Low Rent Public Housing	Nov. 19, 1974	39 CFR 40667 [10]
Housing Assistance Payments Program Substantial Rehabilitation (proposed)	Office of Low Rent Public Housing	Nov. 22, 1974	39 CFR 41061 [11]
Housing Assistance Payments Program - Existing Housing (proposed)	Office of Low Rent Public Housing	Dec. 10, 1974	39 CFR 43179 [12]
Housing Assistance Payments Program - Fair Market Rents (proposed)	Office of Low Rent Public Housing	Dec. 19, 1974	39 CFR 43943 [13]
Comprehensive Planning Assistance (interim)	Office of Asst. Sec. for Community Planning and Development	Dec. 12, 1974	39 CFR 43377 [14]
Housing Assistance Payments Program State Housing Finance and Development Agencies (proposed)	Office of Low Rent Public Housing	Dec. 6, 1974	39 CFR 42753 [15]

As of January 1, 1975 regulations governing loans under Section 202 of the Act, a special program for construction of facilities for handicapped and elderly persons (see p. 8) had not been issued. [16] Until the Section 202 program is activated and experience has been gained with the new Section 8 program, it is too early to determine whether the new housing law will fulfill the high expectations of the Ford Administration and groups interested in the handicapped.

REHABILITATION

Final regulations implementing the Rehabilitation Amendments of 1973 (P.L. 93-112) were issued by HEW's Social and Rehabilitation Service on December 5, 1974 (39 CFR 42469). These new rules contained extensive changes in the organization and contents of previous vocational rehabilitation regulations and a considerable number of technical and substantive modifications

[9] These regulations subsequently were amended on February 7, 1975 (40 CFR 5952) to add application procedures and criteria for discretionary grants and again on June 9, 1975 (40 CFR 24692) to make technical changes and eliminate inconsistencies.

[10] These regulations subsequently were published in final form on April 29, 1975 (40 CFR 18681).

[11] These regulations subsequently were published in final form on April 30, 1975 (40 CFR 18901).

[12] These regulations subsequently were revised on January 23, 1975 (40 CFR 3733) and published in final form on May 5, 1975 (40 CFR 19611).

[13] These regulations were published in final form on April 7, 1975 (40 CFR 15579).

[14] These regulations were published in final form on August 22, 1975 (40 CFR 36855).

[15] These regulations were published in final form on April 15, 1975 (40 CFR 16933).

[16] When these regulations were issued as proposed rule making on May 15, 1975 (40 CFR 21040), they were widely criticized by Congressional sources and groups interested in the elderly and handicapped. Final Section 202 regulations were published in the **Federal Register** on August 20, 1975 (40 CFR 36535).

in proposed regulations issued on May 28, 1974 (39 CFR 18561).

The December 5 regulations are divided into two sections. Section 401 deals with the state vocational rehabilitation program, while Section 402 covers a variety of project grants and other federal programs and activities authorized under the Rehabilitation Act. In addition, the new regulations have been streamlined by eliminating a lot of guideline-like material from the old regulations.

The most significant change is the strong emphasis placed on extending vocational rehabilitation services to severely disabled persons. State vocational rehabilitation agencies are required to give first priority to providing services to severely handicapped individuals. Similar statements of priority for the severely handicapped are contained in regulatory provisions governing other grant authorities, including innovation and expansion grants and demonstration, research and training grants.

The term "severely handicapped individual" is defined in the regulations as follows:

> "....a handicapped individual, (1) who has a severe physical or mental disability which seriously limits his functional capabilities (mobility, communication, self-care, self-direction, work tolerance, or work skills) in terms of employability; and (2) whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time, and (3) who has one or more physical or mental disabilities resulting from amputation, arthritis, blindness, cancer, cerebral palsy, cystic fibrosis, deafness, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, muscolo-skeletal disorders, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, and other spinal cord conditions, sickle cell anemia, and end stage renal disease, or another disability or combination of disabilities determined on the basis of an evaluation of rehabilitation potential to cause comparable substantial functional limitation."

Among the other important features of the new regulations are:

- The authority for extended evaluation of a client's work potential, which has been part of the Act since 1965, is expanded to encompass all vocational rehabilitation services for all eligible clients. Such evaluations may extend for a period of up to 18 months. Previously, only specified rehabilitation services could be delivered to clients with certain disabilities.

- The state vocational rehabilitation agency must develop an individualized plan for every person eligible for services. This plan must be prepared in consultation with the client and must afford the client (or, in appropriate cases, his parents or guardian) a periodic opportunity to review its provisions.

- States are clearly prohibited from establishing upper or lower age limits on the provision of vocational rehabilitation services (although such services must be directly applicable to the achievement of a vocational objective).

- The state agency must develop and implement an affirmative action plan to afford qualified physically and mentally disabled persons employment and advancement opportunities.

EDUCATION OF HANDICAPPED CHILDREN

Section 503 of the Education Amendments of 1972 required the Commissioner of Education to: (a) study all rules, regulations, guidelines and other policies governing Office of Education programs; (b) publish such rules and give the public an opportunity to comment on them; and (c) report the findings of his study to Congress. As part of this comprehensive review of OE policies, proposed regulations governing aid to the states for educating handicapped children appeared in the *Federal Register* on January 11, 1974 (39 CFR 1614).

The proposed rules were essentially a consolidation of regulations previously issued by OE's Bureau of Education for the Handicapped. However, general provisions related to fiscal and administrative matters were deleted from the January 22 regulations and published separately as part of overall Office of Education rules (38 CFR 10386). In addition, for the first time, guidelines governing BEH's state grant programs were published in the *Federal Register*.[17]

EMPLOYMENT OF THE HANDICAPPED

On June 11, 1974, the Department of Labor issued final regulations requiring federal contractors and subcontractors to take affirmative actions to employ and advance qualified handicapped individuals. The new rules, which apply to most

[17] The regulations were published in final form on May 1, 1975 (40 CFR 18998).

federal contracts in excess of $2,500, were intended to implement Section 503 of the Rehabilitation Act of 1973 (see p. 4).

In addition to specifying the obligations of employers covered under the Act, the regulations outline procedures for lodging complaints and penalties for noncompliance. The new rules were effective upon publication.[18] All contract solicitations issued after July 11, 1974 are required to contain provision for an affirmative action program on behalf of handicapped individuals and all contracts executed after October 11, 1974 are required to have such a provision, regardless of the solicitation period.

AIR TRANSPORTATION FOR THE HANDICAPPED

Based on responses to an advance notice issued on June 5, 1973 (38 CFR 14757) and testimony presented at six regional hearings, the Federal Aviation Administration issued proposed regulations governing safety standards for air transportation of handicapped persons on July 5, 1974. Designed to respond to mounting Congressional criticism of the airlines' policies on carrying handicapped persons, the July 5, 1974 regulations outlined uniform criteria for determining when handicapped persons could be carried safely by domestic carriers.

A handicapped person is defined in the regulations as an individual "who may need the assistance of another person to expeditiously move to an exit in the event of an emergency evacuation." Airlines can not refuse to carry a person on the basis that he or she is handicapped if: (a) the individual presents a physician's statement indicating that he or she would not require assistance in the case of an emergency; or (b) the sole basis for such determination is that the individual is either deaf or blind.

The number of handicapped persons requiring assistance is limited to the number of emergency exits on the aircraft. Only one person is permitted who needs to remain on a litter during the flight. Limitations are also included on where handicapped persons may be seated within the plane.

Public response to the proposed FAA regulations were generally unfavorable. Groups representing the physically handicapped were particularly critical of what they felt were overly restrictive provisions in the July 5, 1974 regulations.

MATERNAL AND CHILD HEALTH AND CRIPPLED CHILDREN'S SERVICES

On July 22, 1974, HEW published final regulations governing maternal and child health and crippled children's service grants (39 CFR 26691). The primary purpose of these revised rules was to institute a simplified state plan review system applicable to all health programs in the Department. The July 22 regulations also reflected organizational changes and certain statutory revisions contained in the Social Security Amendments of 1972 (P.L. 92-603).[19]

Proposed rules governing MCH-CC training grants were promulgated by HEW on August 19, 1974 (39 CFR 30029). The purpose of these regulations was to add a new subpart governing grants to institutions of higher learning under Sections 503(2), 504(2) and 511 of the Social Security Act.[20]

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[18] However, the June 11 regulations were widely criticized by key Congressional leaders and representatives of groups interested in the handicapped. This criticism led Congress to amend Section 503 of the Act (see p. 6) and, on August 29, 1975 the Labor Department issued proposed regulations containing extensive revisions (40 CFR 39887).

[19] Additional proposed regulations governing MCH-CC project grants for maternity and infant care, family planning services, intensive infant care, health of children and youth, and dental health of children were issued on March 25, 1975 (40 CFR 12760).

[20] Final regulations were published on March 20, 1975 (40 CFR 12760).

V. THE 94th CONGRESS: A LOOK AHEAD

The political party represented by an incumbent President rarely does well in an off year Congressional election. But the 1974 election was a particularly devastating set back for President Ford and the Republican Party.

As the votes were tabulated on the evening of November 6th, it became clear that the Democrats had won an overwhelming victory. When the final lineup was set, Democrats held 291 House seats to 144 for the Republicans. This net gain of seventy-five House seats and four Senate seats for the Democrats far exceeded the election eve predictions of most political pundits and left them grasping for an explanation. Observers concluded that the results reflected the electorates' general distrust of politicians, rather than any major shift in political philosophy or outlook. With the excesses of Watergate still fresh in mind, voters tended to direct their anger and uncertainty at Republican incumbents.

The new House members, almost without exception, were young, liberal and anxious for change, especially in the areas of expanded federal aid for human service programs and cuts in military spending. However, the campaigns of these new members indicated that, despite their generally liberal views on social issues, they were a different breed from the old New Deal liberals. Many expressed serious doubts about the growing role of the federal government and called for cutbacks in federal spending. This mixture of traditional liberal and conservative values combined with the sheer number of new members led some political commentators to predict that the freshman class would play a pivotal role in the 94th Congress.

Even before the opening session of the 94th Congress, it became clear that many freshman Congressmen were unwilling to dutifully sit back and follow the lead of senior members, as new Congressmen traditionally have done. Elected from Republican or swing districts, many of them recognized that voters were fed up with "politics as usual". They would have to make their mark if they expected to be re-elected in 1976. The formation of an active group to represent the interests of freshman Democrats and the group's subsequent influence on the organization of the new Congress were a clear signal that the brash newcomers would be a force to reckon with in the 94th Congress.

The fact that House freshmen were in a position to challenge the seniority system was due, in part, to the growing unrest over a House committee system in which the chairman often wielded almost dictatorial control over the legislative process. Late in the 93rd Congress, the House rejected a sweeping reorganization plan (the so-called Bolling plan) after weeks of acrimonious debate; however, a number of more modest reforms eventually were adopted (the so-called Hansen plan). Among the few jurisdictional changes was a shifting of responsibility for revenue sharing legislation from the Ways and Means Committee to Government Operations and health care legislation (Medicaid and Maternal and Child Health) from Ways and Means to Interstate and Foreign Commerce.

In early December, the House Democratic Caucus adopted new rules which weakened the role of committee chairmen and strengthened the hand of the House leadership and the Caucus by: (a) transferring power to make all committee appointments from the majority members of the Ways and Means Committee to the party's Steering and Policy Committee; (b) increasing the power of House leaders by permitting them to appoint Rules Committee members; (c) increasing the size of the Ways and Means Committee from 25 to 37 (thus, further diluting the chairman's control); and (d) changing Caucus procedures to make it easier to challenge the automatic elevation of senior Democrats to committee and subcommittee chairmanships.

By the time the 94th Congress opened, it was clear that a change was in the wind. Representative Wilbur Mills, long considered the most powerful figure in the House, resigned as Chairman of the Ways and Means Committee after a highly publicized incident involving an Argentine stripper. Even before Mills' resignation, however, there

were signs that his power had begun to slip. The loss of legislative jurisdiction over key federal programs, such as revenue sharing and Medicaid, combined with the transfer of authority to parcel out committee assignments were serious blows to the Committee's (and Mills') prestige. In addition, the establishment of the Committee on the Budget seemed certain to trim the influence of the Ways and Means Committee in the area of budgetary and economic policy.

The fall of Wilbur Mills symbolized the general decline in power of committee chairmen. In the opening days of the 94th Congress, the Capitol was treated to the unprecendented spectacle of powerful House committee chairmen actively currying the favor of junior members. When the committee chairmenships were eventually submitted to a secret ballot vote in the Democratic Caucus, three long term committee chairmen - Representatives Wright Patman of the Banking and Currency Committee, Edward Hebert of the Armed Services Committee and W. R. Poage of the Agriculture Committee - were ousted.

When the balloting was completed, eleven of the twenty-two standing House committees were headed by a new chairman. More importantly, the strangle hold of committee chairmen over Congressional policy setting had been successfully challenged and a new sense of democracy had been introduced into the functioning of committees.

What influences these broad changes in the composition and operation of Congress will have on legislation directly affecting handicapped Americans is hard to tell. With the exception of the Ways and Means Committee, the leadership of most House and Senate committees handling legislation for the handicapped remained relatively stable. However, as the new Congress began, several key pieces of legislation affecting handicapped children and adults were due for renewal. Among these measures were:

1. *Education for All Handicapped Children Act.* Early in 1975, the Williams and Brademas bills were re-introduced (S.6 and H.R. 7217) and it was apparent that Congress would make another attempt to pass sweeping new legislation establishing a firm national commitment to educating all handicapped children. Buoyed by the more liberal composition of the House of Representatives, Congressional sponsors and organizations advocating an increased federal role in special education began to rally their forces. Behind-the-scenes efforts were underway to develop a compromise formula for distributing federal aid and, although the short range economic and budgetary outlook remained grim, the prospects for action on the Williams-Brademas bills appeared much improved in the 94th Congress.

2. *Developmental Disabilities.* Despite the disappointment engendered by the failure of the 93rd Congress to enact Developmental Disabilities extension legislation (see p. 21), there were some reasons for optimism concerning the prospects of the legislation in the 94th Congress. During informal staff discussions between representatives of the two Houses in December, many of the differences between the two bills were resolved and the areas of disagreement on others were narrowed. Thus, while the issue of federal standards remained unresolved, there appeared to be a strong committment in both bodies to enact legislation early in the 94th Congress.

3. *Rehabilitation.* Largely due to the continuing battle over the formula for allocating basic rehabilitation grant funds to the states, the Rehabilitation Act Amendments of 1974 (see p. 6) only extended the program through fiscal year 1976. Therefore, the 94th Congress will have to consider further legislation to extend the Act.

Given what many Congressional sources felt was an unresponsive attitude on the part of the Administration towards the significant changes made in the 1973 and 1974 amendments, this once sacrosanct program is expected to undergo close Congressional scrutiny. In all likelihood, the response of HEW and state rehabilitation agencies to the 1973 mandate to serve more severely handicapped clients will be examined with particular care.